

M E M O I R S

OF A LATE

EMINENT BOOKSELLER.

UBI LAPSUS? QUID FECI?

Lord COURTENAY's Motto.

L O N D O N:

PRINTED IN THE YEAR M D C C X C.

*The Originals of the several Letters here printed,
will, for three Months, be put into the hands of
the Publisher, for the satisfaction of any Gentle-
man who may doubt their Authenticity.*

February 14, 1791.

MEMOIRS

OF

JOHN ALMON,

Bookseller,

OF

PICCADILLY.

LONDON:

1790.

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THE person who is the subject of these Memoirs, having put all his Letters and Papers into the hands of a Friend, with permission to make any use of them he thought proper ; the Editor has selected *only* such, as did not appear to him in *any* degree confidential. They contain some interesting facts—are certainly entertaining—and undoubtedly shew the estimation in which the person was held, to whom they are addressed. The Gentlemen of the Law, in particular, will probably find some useful hints, and perhaps instruction, on a point of infinite importance to Public Liberty: It is not here, as in many books, a matter of theory, speculation, and opinion---it is essence, fact, and practice.

The Editor has been under the necessity of making a few additions, and some occasional observations, in order to form and connect the Narrative ; but he has mentioned no circumstance that is not perfectly authenticated. And with respect to Chapter XIV. (beginning at page 135) he can with Satisfaction say, that after the most minute Enquiry, he finds that all the Facts therein stated, are faithfully and justly represented.

C O N T E N T S.

	Page
C HAP. I. Origin of his family—Circumstances of his youth	9
C HAP. II. Writes in defence of Mr. Pitt—His acquaintance with Earl Temple—Patronized by that nobleman—Writes in defence of the Duke of Newcastle.—His acquaintance with Mr. Wilkes—Commences Bookfeller in Piccadilly—Mr Onflow's letter to him—Patronized by the opposition club	14
C HAP. III. Prosecuted by Lord Mansfield in the mode of attachment—The prosecution stopped by Lord Rockingham	18
C HAP. IV. Connections with America—Dr. Williamson's letter—Offered a place by the late Right Hon. Charles Townshend—Note on Lord Marchmont's motion, and observations on libels—Letters from Mr. Wilkes at Paris—Purchases Mr. Wilkes's History of England—Publishes the Political Register—Extraordinary circumstances attending that publication—Supports Mr. Wilkes's elections—Sends a receipt to the society called the Bill of Rights—Was not reimbursed	32
C HAP. V. Singular process at Edinburgh—Rights of the livery of the city of London—Accident of making Sir Robert Bernard chairman in Westminster Hall and member for Westminster—Thanks to Serjeant Glynn—Westminster Remonstrance—Prosecution of Mr. Almon for selling Junius's Letter	52
C HAP. VI. Letters from John Calcraft, Esq. to Mr. Almon	76
C HAP. VII. Letters from Lord Mountmorres to Mr. Almon	87
C HAP. VIII. Letter from the author of the Heroic Epistle to Sir W. Chambers—From Dr. Franklin, Mr. Zubly, Mr. Hartley—His information noticed in the house of lords—Letter from Mr. Burke—Letters from Mr. John Lloyd—Answer to Mr. Lloyd's queries	94
C HAP. IX. Letters from Mr. Izard, Mr. Baron Maseres, the Marquis of Buckingham, Sir George Yonge, the Right Hon. W. G. Hamilton	99
C HAP. X. Letters from Mr. Sykes; from on board the Victory; from the Right Hon. William Pitt, the Rev. T. Powys, Mr. John Kennion, Mr. Burke, Mr. Bradford, Mr. Wharton, the late Earl Temple, Sir James Caldwell, Lord Camden, and Marquis Townshend	104
C HAP. XI. Cause and progress of printing the debates in parliament—Parliamentary Register—Remembrancer—New Foundling Hospital for Wit—Quits London—Death of his wife—Letters from Dr. Brocklesby, Governor Pownall, Marquis of Buckingham	118
C HAP. XII. Marries again—Returns to London—Prints a daily newspaper—Letter from Mr. Macklin—Prosecuted by Mr. Pitt—Chosen one of the common council—Account of his Conduct in that situation—Committee on the high prices of provisions	125
C HAP. XIII. A short account of the literary works he had in contemplation	132
C HAP. XIV. Ensnared by an anonymous correspondent and prosecuted—Effects of that prosecution—Dr. Hayter's Essay on the Liberty of the Press	135
A PPENDIX. Trial of Mr. Almon for selling Junius's Letter	167
Arguments for a new trial.	187
Trial of an action brought by Mr. Pitt against Mr. Almon	236

M E M O I R S, &c.

C H A P. I.

Origin of his Family.—Circumstances of his Youth.

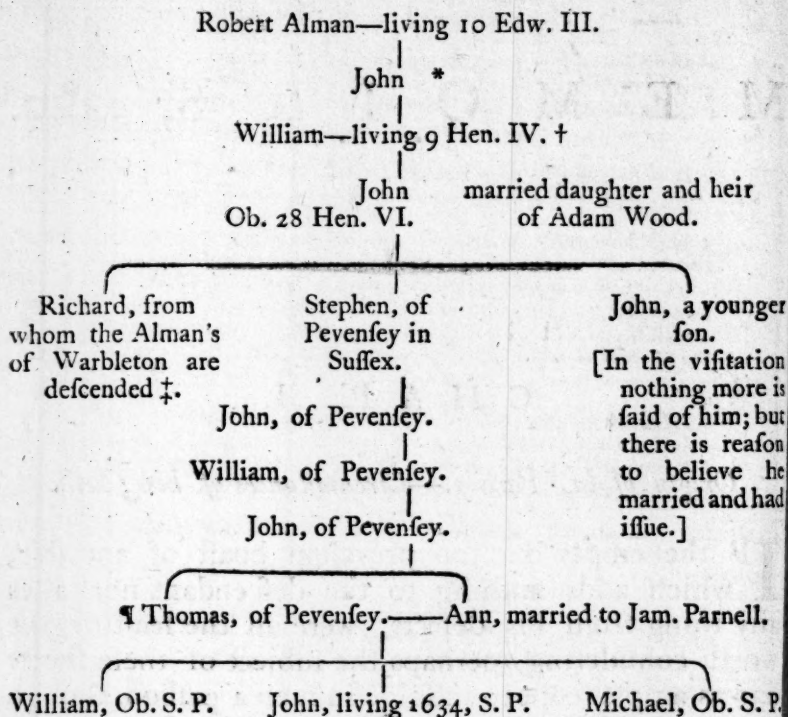
IF the empty but too prevalent boast of ancestry, which adds nothing to the descendant nor takes any thing from his defects, were in the least degree worth considering, perhaps the subject of these sheets had as ample scope to indulge in such a passion, though he never did, as some persons, whose pedigrees contain their principal honours. But the boast of ancestry was never made by him: it is not known that he ever mentioned the subject. However, as it is impossible to omit the matter entirely, it is proper to say, that what is here related of his family, is collected from papers which were furnished by his friends.

The name is supposed to be of continental origin. Whether the first who came into this island was with William the Conqueror, or afterwards, is not material. The first mention there is of the name in England, is in the visitation of the County of Sussex, in the Herald's Office. According to the custom and unsettled orthography of past ages, this name, like most others, has been variously spelt; sometimes Alman, Almon, Almond, &c. but the arms of all are the same.

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The descent of the family, as entered in the visitation of Suffex, in the Herald's Office, is as follows.



* He had two sons, the eldest whose name was John, was a priest, and was presented to the rectory of Rockland Tofts, in Norfolk, 12th of June, 1394; he resigned it 1398, and died soon after. He spelt his name Almon. It is not improbable that there has been an error committed in some early transcript or entry of the name. The mistake in writing, or in reading, Alman for Almon, might easily happen from many causes: probably from that love of singularity and affectation of novelty, which prevailed through many of the former ages; in which the son is frequently found to spell his name different from the father.

† He had also two sons, the eldest, William, was also a priest and chaplain. He was knighted by Edward IV. died in 1479, and buried in St. Peter's of Mancroft, in Norwich: he likewise spelt his name Almon.

‡ According to the visitation this branch seems to be extinct. This Richard had a son named John, who married Alicia, daughter of Playsted. Their son Amius Alman, married Joan, daughter of Palmer, and had issue two sons and daughters. The eldest son, William, is entered of Iwood in Suffex, but nothing more is said of him; the second is Anthony, with the addition of S. P. The daughters are not named.

¶ This Thomas made his will the 13th of December, 1577, by which he entailed his lands on his three sons, and in case they died issueless (which was the case), upon his sister Ann Parnell.

Parnell

became possessed of estates in North Meales in Lancashire, held by leases on lives from the *Bold* family, of Bold near Warrington; likewise from the *Heskeths* of Rofs-Hall; and of several houses in Pool-lane, Thomas-street, Atherton-street, Moore-street, Edmund-street, &c. in Liverpool. He had issue by *Isabella*, *Francis*, of whom hereafter, born in 1732, and *John*, born 17th of December, 1737, who is the subject of these memoirs: also three other children, who died infants.

The above-named *John*, with his wife *Isabella*, lived for some time in one of their own houses in Moore-street, in Liverpool, where all the children were born. In 1743, he went to Ferrol in Spain, and from thence to Lisbon, and being fond of a maritime life, he served as a volunteer on board Admiral *Matthews's* fleet. In 1744, Mrs. *Almon* went to Ireland to see her husband's relations; and in the month of October in the same year, she embarked at Dublin, on board a snow called the *Fame*, to return to Liverpool. But the snow never arrived. She was wrecked on the coast of North Wales, and the passengers and mariners all perished. Some pieces of the wreck, which at first were only supposed, but afterwards believed, to be parts of the *Fame*, being washed ashore, furnished the only proofs of this calamity. For a long while therefore, flattering hopes were entertained that the vessel might possibly be driven to the northward

Gilbert Wright, the younger, who died unmarried (as above-mentioned), did not hear of *Rhodes's* death, until some years after it happened. He then employed Mr. *Tyre*, an attorney, in Ormskirk, to obtain *Rhodes's* property; but *Gilbert* dying, and his brother *Gilbert Thompson* dying also about the same time, the matter was suffered to drop. In the year 1767, the person who is the subject of these memoirs, attempted to revive the cause: but upon going into Lancashire, and finding that *Tyre* had been a long while dead, and his papers lost, and considering the expence of bringing witnesses two hundred miles, and above all, the great and many difficulties in combating an adverse administration, he determined to abandon the attempt, although it was the opinion of Serjeant *Glynn*, whom he consulted, that the prospect of success was not unhopeful; but there was a certainty of incurring an enormous expence in the King's Bench, in Chancery, and perhaps, to the House of Lords.

or southward, and perhaps have put into some distant port. But time has produced no other intelligence.

In the month of December 1744, the two orphans (as they were supposed to be) *Francis* and *John*, were taken under the care of their grand-mother, *Margaret Thompson*, who was still alive, and who lived to the age of 101. She had them brought to her residence at North Meales, a village on the south side of the mouth of the river *Ribble*. She put them to school, and bestowed upon them every possible mark of attention.

In the year 1751, *Francis* went from Liverpool with Captain *Clements*, to the West Indies. One letter was received from him at Jamaica and no more; nor has any other advice or intelligence been received concerning him; he is therefore supposed to be dead.

We now come to the person, who is the subject of these sheets.

In the month of March 1751, he was put apprentice to Mr. *Robert Williamson*, bookfeller and stationer, in Liverpool; who, as is not uncommon with bookfellers in provincial towns, exercised also the trades of bookbinder and printer. In the month of September 1758, he left Liverpool and went to the Continent. He landed at Middleburgh and from thence went to the Hague. At the Hague he wrote an ode addressed to his friend Mr. *Sykes*, of Liverpool*; a gentleman for whom he always entertained the warmest esteem, whom he always called his preceptor and the friend of his youth. He visited other places upon the Continent, and was a short time up the Mediterranean, at Cagliari, Civita Vecchia, &c. from thence he re-

* This ode is printed in the New Foundling Hospital for Wit, together with several more of his poetical pieces, which are scattered in the different volumes, and in the Asylum for Fugitive Pieces. His taste for poetry was far from being contemptible, and some of his lyrics are not without merit; but the active scenes of life in which he engaged, afforded very little leisure for indulgence in poetry.

turned

turned to England and went to London; where, being a perfect stranger, he at first sought employment as a journeyman printer †. He was but a little while in this situation, for he speedily got acquainted with the booksellers, by whom he was employed in some compilations, and in writing pamphlets upon temporary subjects. The extraordinary success which attended some of the latter, induced Mr. Say, printer of the daily newspaper called the *Gazetteer*, in the month of January, 1761, to engage him at a fixed salary, as an assistant to him in the conduct and management of his paper.

C H A P. II.

Writes in Defence of Mr. Pitt.—His Acquaintance with Earl Temple.—Patronized by that Nobleman.—Writes in Defence of the Duke of Newcastle.—His Acquaintance with Mr. Wilkes.—Commences Bookseller in Piccadilly.—Mr. Onslow's Letter to him.—Patronized by the Opposition Club.

UPON the resignation of Mr. Pitt, in the month of October 1761, he wrote many letters in the *Gazetteer*, in support of that minister's character and measures, under different signatures; but several of them under that of an Independent Whig, which, and Lucius, were his most usual signatures. Whoever recollects the period, must have observed the prodigious streams of abuse which were poured upon Mr.

† It is an anecdote of singularity, that during the time he was a journeyman printer, he happened in the house of one of the masters he worked for, to be put into the same frame (a technical term signifying situation) in which Dr. Benjamin Franklin had worked some years before.

Pitt, in all the channels of conveyance to the public ; while his friends, for a long time, seemed to be unaccountably indolent and indifferent. The fact is, that Mr. *Almon*'s volunteer pen, was the only one exercised on that side for several months.

In the month of November, 1762, he published a review of Mr. *Pitt*'s administration. This was a hasty performance, and consisted of nothing more than a recapitulation of the public events of Mr. *Pitt*'s administration. However, it went through several editions. He dedicated it to Earl *Temple*, Mr. *Pitt*'s brother-in-law. His Lordship requested to see the author. Mr. *Almon* waited upon him, and from that moment was honoured with his Lordship's favour and countenance, publicly and privately. Lord *Temple* carried him to the Duke of *Newcastle*, to make known to his Grace the author of some letters which Mr. *Almon* had written in the *Gazetteer*, at the time of the Duke's resignation. His Grace expressed himself in terms of the warmest friendship, gave him many thanks, acknowledged the great pleasure he had received every day in reading those letters ; that they contained his own sentiments exactly, and much more to the same effect. Lord *Temple* afterwards made him known to the Duke of *Devonshire*, the Marquis of *Rockingham*, &c. Mr. *Pitt* he saw at Lord *Temple*'s in Pall-mall, where he did not fail to pay his devoirs once a week at least, and was always admitted. Through the same interest he became known to Mr. *Wilkes*, and many other gentlemen who were at that time in opposition to the court.

On the morning that the king's messengers entered Mr. *Wilkes*'s house, which was the 30th of April, 1763, Mr. *Almon* happened to call upon Mr. *Wilkes*, about nine o'clock. The messengers did not prevent Mr. *Almon* seeing Mr. *Wilkes*, who in a low voice told him his situation, and begged he would immediately acquaint Lord *Temple* ; nor did the messengers prevent him going out of the house. He went instantly to
Lord

Lord *Temple*, and informed his Lordship of what Mr. *Wilkes* had said. Lord *Temple* requested Mr. *Almon* to go directly to Mr. *Arthur Beardmore*, and desire him to obtain a writ of *habeas corpus* for Mr. *Wilkes*, with all possible dispatch, and to meet him (Lord *Temple*) at Mr. *Wilkes*'s house.——It was to evade the writ of *habeas corpus*, that Mr. *Wilkes* was committed close prisoner to the Tower; and Lord *Halifax* afterwards blamed the messengers for suffering Mr. *Almon* to go out of Mr. *Wilkes*'s house.

The spirit of party being at this time (1763) advanced to a considerable height, he thought this a good opportunity to emancipate himself from his subaltern situation with Mr. *Say*, and to create a more permanent property for the support of himself and family*. Having been bred a bookseller, he conceived that the exercise of that profession in the vicinity of St. James's, might probably prove successful. He mentioned his design to Lord *Temple*, who gave him the warmest assurances of support. Accordingly at Michaelmas, 1763, he took a private house in Piccadilly, opposite to Burlington-house; the lower part of which he converted into a shop for books and stationery. But he preserved a connexion with Mr. *Say*, which was of mutual service. Lord *Temple* was better than his promise, for he not only quitted his bookseller and stationer, but engaged many of his friends to do the same in favour of Mr. *Almon*; and when the opposition club, called the *Coterie*, was established at *Wildman's*, in Albemarle-street (1764,) Lord *Temple* put Mr. *Almon*'s name in the regulations of the house, as bookseller and stationer to the club. This circumstance brought him a great flow of business, and the publication of many excellent pamphlets; some of them written by the Right Hon. *Charles Townshend*,

* About three years prior to this circumstance, viz. on the 27th of October, 1760, Mr. *Almon* was married by the Rev. *Charles Churchill* (the poet), to Miss *Elizabeth Jackson*, of Millbank, Westminster; by whom he had ten children. She died in 1781.

Hon. *Horace Walpole*, Dr. *Butler*, afterwards Bishop of Oxford, and now of Hereford, and several other gentlemen equally eminent. Nor does he himself seem to have been idle *, as may be inferred from the following letter.

" SIR,

" I enclose to you the legal proceedings against *Alexander Dunn*, for his attempt against our friend *John Wilkes*. I beg you will be so good as to let me have them returned with the other papers I sent you, as soon as you have done with them. I wish I could be of any service to you, who have wrote so much yourself and have printed so boldly in the cause of liberty. I desire you will be kind enough to let me have a line from you as soon as Lord *Temple* comes to town.

I am,

Very much your friend,

Nov. 7, 1765.

G. ONSLOW.

*Directed to Mr. Almon,
Bookseller, opposite Bur-
lington-house, Piccadilly.*

Frank, G. Onslow.

But every good has its alloy. In a very little time he was marked out for ministerial prosecution. As soon as Mr. *Wilkes* was fully disposed of, the *Regius Diabolus* began with Mr. *Almon*.

* The pamphlets which Mr. *Almon* wrote are not all known. It is only certain that he wrote many.

CHAP.

C H A P. III.

*Prosecuted by Lord Mansfield in the Mode of Attachment.
—The Prosecution stopped by Lord Rockingham.*

IN the year 1764, he published a pamphlet entitled, "A Letter on Libels, Warrants, Seizure of Papers," &c. which was universally read and highly commended: several editions were sold very rapidly. The doctrines laid down, were, in general, admitted to be sound and constitutional; but some persons, however, were exceedingly offended at particular passages. The friends of the *Yorke* family, and Lord *Marchmont*, took public notice of it, by writing against it in the newspapers; but the person who was most offended with the pamphlet, was Lord *Mansfield*. At the instance of his Lordship, a prosecution was instituted by the Attorney General (*Sir Fletcher Norton*), against the publisher, not in the common way by indictment or information, but by motion in the court of king's bench, for a writ of attachment for contempt.

This summary and unusual mode of proceeding, attracted the attention of the public. To bring a matter into the court of king's bench, in which his Lordship was party, was considered very extraordinary; and to do it by the mode of attachment, which does not admit of the interposition of a jury, was more extraordinary: and to denominate a passage in a book a contempt of court, (for all contempts are usually understood to consist of some positive fact or act of disobedience), was pronounced a dangerous stretch of power.

The passage that was selected, in order to ground the proceedings upon, was a paragraph which was supposed

posed to allude to the alteration of the record, in the prosecution of Mr. *Wilkes*, for the North Briton, Number 45.

In order to shew the affinity, which the passage in the pamphlet bore to the fact, it was necessary to state the fact itself, upon oath; which was done. And here it is proper to observe, that until this prosecution was commenced, the fact of altering the record, in the prosecution of Mr. *Wilkes*, was only known generally. The fact had not been before ascertained by any evidence or testimony; like many other reports equally true, it was until this time, known only upon verbal authority.

In the King's Bench.

MIDDLESEX.—The King against *John Wilkes*, Esq.

Francis Barlow, of the crown office in the Temple, and *William Hughes* of the same place, severally make oath; and first the deponent *Barlow* for himself saith, That on the eighteenth day of February last, he received directions from Mr. *Wallace*, or Mr. *Webb*, to apply to a judge to get information against the defendant, amended, by striking out the word *purport* and inserting in its stead the word *tenor*; That he, this deponent, did accordingly apply to the Right Honourable Lord *Mansfield*, and obtained a summons to shew cause why it should not be amended, a copy whereof is hereunto annexed; and this deponent immediately after he had obtained the same, sent two copies thereof, viz. one to the other deponent, *Hughes*, who was clerk in court for the defendant, and the other copy to Mr. *Philipps*, solicitor for the said defendant; and this deponent was informed, and does believe, that such copies were left that night at their respective houses; and this deponent, *Barlow*, further says, That in consequence thereof, he, this deponent, on Monday the twentieth day of the same month, of February

February in the morning, attended Lord *Mansfield* at his house, and there met the other deponent, *Hughes* and *Philipps*, and this deponent remembers that Lord *Mansfield* asked them what objections they had to such an amendment, and that they or one of them made answer, That they could not consent; and this deponent remembers that Lord *Mansfield* said, He did not ask their consent, but wanted to know what their objections were; and asked if it was not usual or the common practice to amend informations, or to that or the like effect; and that Lord *Mansfield* mentioned or read from a book or manuscript, which his Lordship had in his hand, several cases of amendments, and that afterwards his Lordship made an order to amend the information in this cause, a copy of which order is hereunto annexed. And this deponent, *Hughes*, for himself saith, That he remembers to have been served with a copy of such summons, and that he attended Lord *Mansfield* when such order was made as above set forth, and according to the best of his remembrance, and belief, what is above deposed by the other deponent *Barlow*, is true.

Fra. Barlow.

Wm. Hughes.

Sworn by the deponent *Francis Barlow*, the 22d January, 1765, at my chambers in Serjeants'-inn, before me,
E. Wilmot.

Sworn by the deponent *William Hughes*, in the King's Bench Treasury Chamber, Westminster-hall, the 23d day of January, 1765.
E. Wilmot.

MIDDLESEX.

MIDDLESEX.—The King against *John Wilkes*, Esq. on an information for publishing a Libel, intituled the North Britain.

LET the defendant's clerk in court, agent, attorney or solicitor, attend me at my house in Bloomsbury-square, on Monday the 20th day of February instant, at eight o'clock in the morning; to shew cause why the information in this cause should not be amended, by striking out the word *purport* in the several places where it is mentioned in the said information, (except in the first place), and by inserting instead thereof, the word *tenor*.

Dated this 18th Feb. 1764.
Mansfield.

MIDDLESEX.—The King against *John Wilkes*, Esq. on an information for publishing a Libel, intituled the North Britain.

David Bell, of Swallow-street, in the county of Middlesex, yeoman, maketh oath, That on the seventeenth day of this instant, month of January, he bought at the shop of *John Almon*, in Piccadilly, in the county of Middlesex, the book or pamphlet hereunto annexed, intituled, "A Letter concerning Libels, War-rants, Seizure of Papers and Security for the Peace, &c." And which said pamphlet or letter is mentioned in the second title page, to be "printed for J. Almon, opposite Burlington-house, in Piccadilly, 1765;" which said pamphlet or letter, was sold and delivered to this deponent, at the said shop of the said *John Almon*, by a woman belonging to the said *John Almon*. And this deponent paid her for the same, the sum of one shilling and six-pence.

David Bell.

Sworn at the Treasury-Chamber,
Westminster-hall, the 23d day
of Jan. 1765, before *E. Wilmot*.

" A LET-

" A LETTER concerning Libels, Warrants, The Seizure of Papers, and Sureties for the Peace or Behaviour; with a view to some late proceedings, and the defence of them by the majority—The third edition, enlarged and improved: London, printed for *J. Almon*, opposite Burlington-house, in Piccadilly, 1765."

" OR, If any chief justice, contrary to the usage of judges who are to have no ears for any thing that is to come in judgment before them, until the same is brought on judicially, should, weeks before any crown trial, officiously send for the proceedings, to see whether they were legal, and upon discovering an error on the prosecutor's side, should summon the attorney of the other side, and tell him he must consent to the setting right of this error, to the end that the tenor of the pleading might be such as judgment could be pronounced upon; and notwithstanding the attorney should protest he could not consent thereto upon the account of his client, and that the same being a criminal prosecution, and that such alteration of the record was not warranted by any adjudged precedent; should, nevertheless, arbitrarily direct it to be done, without either having the point debated before himself by counsel, or brought on before the whole court for their opinion; and that the defendant being found guilty by the jury, should be deprived by such amendment of taking the advantage of the error aforesaid, in arrest of judgment, which he might otherwise have done, and the same would have been fatal to the prosecutor."

Wednesday next after the octave of Saint Hilary, in fifth year of King George the Third.

MIDDLESEX.—The King against *John Wilkes*, Esq.

Upon reading the several affidavits of *Francis Barlow* and another, and a paper writing thereto annexed, and

of *David Bell*, a pamphlet, intituled, A Letter concerning Libels, Warrants, Seizure of Papers, and Security for the Peace, &c. thereto annexed, it is ordered, That Wednesday next be given to *John Almon*, to shew cause why a writ of attachment should not issue against him, for his contempt upon notice of this rule, to be given to him in the mean time.

On the motion of Mr. Attorney General,

By the Court.

This rule was dated the 25th of January, 1765. The attorney general at that time was Sir *Fletcher Norton*, afterwards Lord *Grantley*.

When the day arrived for shewing cause, there being only Sir *J. E. Wilmot* upon the bench, (for Lord *Mansfield* went off the bench, it being his own cause, and Mess. *Denison* and *Yates* were both absent by sickness) he declined hearing the argument *alone*, and desired that the matter might be put off until next term, when there would be a full court.

On the first of May, 1765, (Easter term) Sir *Richard Aston* being appointed judge, in the room of Judge *Denison*, who had resigned, and Judge *Yates* being recovered, the arguments upon shewing cause, why a writ of attachment should not issue against Mr. *Almon* for his contempt, came on to be heard before the judges *Wilmot*, *Yates*, and *Aston*.

Mr. *Almon's* counsel were Mr. Serjeant *Glynn*, and Mr. *Dunning*, afterwards Lord *Ashburton*.—For the prosecution there were the attorney and solicitor general, (*Norton* and *De Grey*,) the chief justice of Chester, (*Morton*,) and Mr. *Wallace*.

The defendant's counsel exerted themselves with great energy and force of reasoning against this mode
of

of proceeding. They acknowledged that the process by attachment, was, in certain cases, and upon particular occasions, perfectly legal; but they earnestly contended that the matter before the court was not one of those cases. They cited precedent to prove that a chief justice, of the most indisputable abilities, had declined the use of this mode of proceeding. This was the great Lord *Coke*. They observed, that the cause now depending is the most important, and the most essentially interesting to the liberty of the subject, of any that ever had been brought before that judicature. That the method of trial by a jury is the inherent, the native, the peculiar privilege and glory of Englishmen; that this mode of process was originally founded on the best and the most solid principles, and that the wisdom of it had been approved by a long succession of ages; that whenever it should be deemed expedient to alter it, and to adopt any other mode of proceeding, the legislature, as it is the most proper judge of this expediency, so it would be the only proper authority to enforce the subjects' obedience. They contended that the pamphlet did not at all suit the party alluded to. That it appeared from the affidavits on behalf of the prosecution, that the facts were not as stated in the pamphlet; and if so, there was an end of the cause for the particular mode of proceeding contended for. That it was impossible the characters drawn in the pamphlet should be the portrait of an original, it deviated so far from the likeness of any chief justice, particularly the present one of the court of king's-bench. That it was only in answer, by way of argument to another pamphlet, that had advanced doctrines not agreeable to the notions of the author of *The Letter on Libels*. They likewise urged, that supposing a pamphlet to be a reflection on the party alluded to, yet that an *attachment* was an improper mode of proceeding in this case; for that if the chief justice of the court was alluded to, he had several methods to do himself justice, without taking this *unconstitutional* one; he was a member of a most illustrious body, who
would

would never suffer the slightest reflection on the character of any of their members to pass unnoticed or uncensured; that as a peer of the realm, he was entitled to his action of *scandalum magnatum*, wherein he need not fear but that a jury would give him a proper satisfaction for any injury he should *prove* to them he had received.

That an attachment (the process of contempt) was originally instituted for the benefit of the subject; it was established to enforce obedience to the commands of courts of justice; it was founded in necessity, for, if the courts of justice were not possessed of such a power, their proceedings would be vague and nugatory, and therefore as the case before them was not attended with any of the peculiar circumstances necessary to support an application of this sort, it would be too much for the court to extend it beyond its original limits.

That a contempt must be a positive fact, must be an act done and committed. A *constructive* contempt was a thing never heard of: it would be such a comprehensive encrease of power, that no person would be safe one moment wherever it was permitted.

That even the practice of granting informations, which went a great way, would be nothing if the present motion were granted.

The method to apply for an information is this; the party who conceives himself injured, annexes the paper in which he thinks himself alluded to, to his own affidavit, wherein he swears that he believes the writer, printer, or publisher, (as the case may happen to be) intended to reflect on him; whereupon the court grants the information, but the defendant is always tried, and the fact proved to the satisfaction of a jury; but in this case, if the attachment goes, the court exercise the *distinct* and *peculiar* provinces, of *party, judge, evidence, and jury*.

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They observed, that it was no contempt to disobey the order of a judge at *nisi prius*, at the Old Bailey, or at chambers, till made rules of court, which was generally done of course, from the respect the court paid to the persons who made such orders; however, as the order in question never was made a rule of court, it was no contempt.

They instanced the late Lord *Ferrers's* case, in which an *babeas corpus* had issued in the vacation to bring his countess before a judge; which the earl not doing, a motion was made the ensuing term for an attachment, for a contempt in not obeying the writ; but the court was of opinion it was no contempt of court, the writ not having issued by virtue of a rule of the court, and the motion was denied, and a rule granted for another *babeas corpus*.

Another case they instanced was, a motion for an attachment against the publisher of *The Moderator*, in which Lord Chief Justice *Pratt's* determination for discharging Mr. *Wilkes* from his commitment, was called *precipitate* and *inconsiderate*, *injudicious* and *erroneous*; yet the rule was never made absolute.

The attorney general, after expatiating very largely upon the heinousness of the offence, took occasion to say, that if Mr. *Almon* had, at the time that the motion for the rule was made, (which was in January, 1765), stopped the circulation of the book, and had come personally before the court, and made some kind of submission, he had no doubt that such a conduct would have had its proper weight; and for his own part, he should have been so thoroughly satisfied with it, he would not have prosecuted the matter any further. But instead of that, his conduct had been the reverse: he had printed the libel several times since the present proceedings had commenced; he had circulated it all over the kingdom, all over Europe he believed.

The solicitor general (*De Grey*) afterward Lord *Walingham*, said but little.

Mr.

Mr. *Morton* was very strong for severe punishment ;
 to which Mr. *Wallace* agreed.

Mr. Serjeant *Glynn* replied. After which

Sir *J. E. Wilmot*, who presided in the absence of
 Lord *Mansfield*, (who left the bench the moment the
 counsel began) observed, that the arguments had been
 strong, and the case was so important, the court
 could take time to consider of both ; and would give
 notice to the counsel, when they were ready with their
 opinions.

Nothing further was done during that term.

A few days after the commencement of the next
 term (Trinity) Mr. *Almon* gained information, that
 the judges having had a consultation upon the subject,
 had discovered an ERROR in the proceedings, which
 they said was *fatal*, but it might be amended *with*
 the consent of the defendant's counsel, and *without* such
 consent it could not.

The error was in the first process. It was in the rule
 granted in January to shew cause. It was therein called,
King against John Wilkes. Whereas it ought to have
 been, *the King against John Almon*.

Mr. *Almon* communicated his information to his
 counsel. Neither of the gentlemen gave any credit to
 it. They were confident there was no truth in it.
 The error had escaped the observation of all the
 counsel.]

However, next day, to their astonishment, the fact
 came out. For about two o'clock, just as the court of
 King's-bench was supposed to be rising (the court of
 Common-pleas was up) Lord *Mansfield* suddenly left
 the bench, and Sir *J. E. Wilmot* instantly called for
 Mr. *Almon's* counsel. Mr. *Dunning* happened to be

in the court, and a messenger was sent for Mr. Serjeant Glynn, who having left the court of common pleas, was overtaken at the hall-gate, just as he was stepping into his carriage. When the serjeant came into the court, Mr. Justice *Wilmot* said he had a matter to propose to them in the affair of the attachment against Mr. *Almon*, to which he should desire their concurrence: in the rule granted last January, there was found to be a material mistake; it was called, *the King against John Wilkes*, instead of *the King against John Almon*. His desire was, that the defendant's counsel would give their consent to amend the error, by striking out Mr. *Wilkes's* name, and inserting Mr. *Almon's*.

Mr. *Dunning* said, that if it was meant to extend the charge of *contempt* to other parts of the pamphlet, the defendant would be adjudged unheard; for all the arguments of his counsel had been confined to the paragraph, which had been supposed to allude to the alteration of the information, in the particular case of Mr. *Wilkes*; which transaction not being an act of the court, but of a single judge, at his own house or chambers, was not, as he and the learned serjeant had contended, and did still contend, nor could not by any fair and liberal construction, be called a *contempt of the court*. Now if it is intended, said he, to shift the ground of accusation, it must be by a fresh rule, and fresh affidavits*.

Mr. Serjeant Glynn said the proposal had surprized him a good deal. He was totally unprepared. It was not the practice of the court to make such applications. He could not consent to it.

Mr. Justice *Tates* said, the error had come to his knowledge only a day or two ago; that there was other

* The part of the pamphlet which was supposed to have stood next the line of offence, was that concerning the habeas corpus.

matter in the pamphlet, which was of the highest consequence to the court ; and though it was not the practice of the court to make such alterations, yet in this very extraordinary case, he thought the desired alteration both perfectly right and necessary.

Sir *Richard Aston* admitted, that it was not the practice ; but this was a very particular case, in which the honour of the court was deeply concerned.

Sir *J. E. Wilmot* very earnestly and warmly solicited Mr. Serjeant *Glynn* and Mr. *Dunning*, to give their consent to the proposed alteration. He made use of a variety of arguments, such as, accelerating the course of justice ; the disreputable idea of a suspicion to the contrary, &c.

At length Mr. Serjeant *Glynn* moved to discharge the rule. The court refused to agree to the motion. The attorney-general (Sir *F. Norton*) said he would consent to the motion to discharge the rule, if the learned serjeant would add to his motion, that it was in consequence of the mistake, that the name of *Wilkes* had been put in instead of *Almon*.

Mr. *Dunning* said he would not agree to that, because it left, by strong implication, ground for a fresh rule.

Notwithstanding every thing was urged from the bench, that great abilities could suggest and enforce, till Mr. Serjeant *Glynn* and Mr. *Dunning* continued firm in their refusal.

At length the judge (*Wilmot*) asked Mr. Serjeant *Glynn*, as a gentleman, to give his consent. The judge and the serjeant lived upon terms of intimacy, and this request being made to him, as from one gentleman to another, piqued the serjeant a good deal, who, with some warmth replied, That as a man of honour he could not

not consent; for that his client had been with him the day before, had told him of the error, and the intention of the proposed amendment, which at that time he did not give credit to; and had instructed him particularly not to consent to the amendment, if it was proposed. This altercation, which had lasted above two hours, now ceased; and another application was made from the bench. This was a request, that they would move for a rule to shew cause, why the present rule should not be discharged? Mr. *Dunning*, who had also been a good deal irritated, sharply said, What! a rule upon a rule! it is contrary to all practice. This request was also refused.

Next day, Mr. *Philip Carteret Webb*, solicitor of the treasury, prepared a fresh accusation, from a considerable quantity of fresh matter, extracted from the pamphlet, with fresh affidavits of the publication, &c. all which were read in court; and a motion made for a new rule, against Mr. *Almon*, to shew cause why a writ of attachment should not issue against him for his contempt.

The rule was granted. But Mr. *Almon* being gone into the country (apprehending the business to be finished) the officers could not make a personal service of the rule; and complaint of this circumstance being made to the court, the following *third* rule was issued.

Saturday next, after fifteen days from the day of the Holy Trinity, in the fifth year of King George the Third.

ENGLAND.—Upon reading the several affidavits of *John Topham* and another, and a rule of this court thereto annexed; and of *Robert Mason*, and a duplicate of the same rule thereto annexed, it is ordered that Tuesday next be given to *John Almon*, to shew cause why a writ of attachment should not issue against him for his contempt. And it is further ordered, that leaving a copy of this rule with, and shewing the original to any

of the family; of the said John Almon, at the dwelling-house of him the said John Almon, shall be deemed good service of this rule.

On the motion of Mr. Wallace,

By the Court.

On the day appointed by the last rule for shewing cause, Mr. *Dunning* stated to the court, the shortness of time that had been allowed the defendant to make a defence to the great length of fresh matter which had been selected; and asserted, that it was impossible to consider of a proper defence, in a case of such importance, which had engaged the attention of persons of all ranks, without longer time. And, after very forcibly representing the harshness, and seeming persecution in the case, moved to enlarge the time for shewing cause, until the next term. The motion was granted.

Next month (July 1765) the ministry were changed, and a total revolution in politics took place. Mr. *Torke*, who had been appointed attorney-general, was desirous of continuing this prosecution; but the Marquis of *Rockingham*, who was then minister, being applied to by *W. Fitzherbert*, Esq. (at that time member for Derby) on the part of Mr. *Almon*, his lordship interposed, and prevented any farther proceedings.

In putting his negative upon the preceding prosecution, the conduct of Lord *Rockingham* was not only handsome, but generous: for when the king had resolved to change his ministers, in 1765, the government was offered to Mr. *Pitt* and Lord *Temple*, before it was offered to Lord *Rockingham*; but they refused it, and Lord *Rockingham* accepted it. The differences between Lord *Rockingham* and Lord *Temple*, upon this occasion, were published by Mr. *Almon*, stated in a manner very unfavourable to the side of Lord *Rockingham*. But his lordship was no stranger to Mr. *Almon*'s obligations to Lord *Temple*; and therefore, with that true

true greatness of mind, which distinguished all his conduct when acting from himself, he did not suffer this circumstance to check the exercise of his power.

Mr. *Almon* was called Lord *Temple's* man. His visits to Pall-mall and Stowe were frequent and notorious. At both places, he was always received in the most gracious manner. Had the negociation for a change of ministers succeeded, in the autumn of 1763, Lord *Temple*, who was to have been at the head of the Treasury, had designed Mr. *Almon* for a situation. It was an irreparable loss to Mr. *Almon*, as well as to some others of Lord *Temple's* friends, that his lordship never chose to accept any of the many offers which were made to him by the court.

C H A P. IV.

Connections with America.—Dr. Williamson's Letter.—Offered a Place by the late Rt. Hon. Charles Townshend.—Note on Lord Marchmont's Motion, and Observation on Libels.—Letters from Mr. Wilkes at Paris.—Purchases Mr. Wilkes's History of England.—Publishes the Political Register.—Extraordinary Circumstances attending that Publication.—Supports Mr. Wilkes's Election.—Sends a Receipt to the Society called the Bill of Rights.—Was not re-imbursed.

ON the repeal of the American stamp-act, Mr. *Almon* was warm in favour of that measure, writing and publishing a good deal in support of it. This conduct was soon distinguished in America, and the

the American writers constantly sent him their pamphlets and papers to be re-printed in England. * He used frequently say, that all the British measures against America, originated not in the ostensible ministers, but in a junto of American and English traitors. There was a junto in London, in the pay of the natural enemy, and another at Boston, in the pay of the English

" Philadelphia, Dec. 11, 1766.

* " S I R,

" Sunday last, I arrived here in perfect health, having met with very little bad weather, tho' we had a long passage. According to your request, I spoke to Mr. — ; he promises to send you, by this opportunity, all the papers as far back as the beginning of the stamp-act debate, and is very willing to open a correspondence. He is to send you a piece called *Dr. Benjamin Franklin's examination before the house of commons*: The Doctor sent it to Philadelphia to support his own character, which he thought was in danger. Some people here suspect that this piece contains much more than his examination, and that he never gave such answers, except in his closet. If you can find that members of the house of commons are also of this opinion, it may be worth while to re-print this examination, together with the *authentic* copy of the same, as a curiosity, and a thing that may render people more cautious how they impose on the public. [Mr. *Almon's* edition of *Dr. Franklin's examination*, which was the only one printed in England, was copied from the minutes of the committee.] As you are in quest of letters wrote from America, during the stamp debate, to the ministry, be pleased to try if you can get a copy of any letters wrote by Captain *Antrobous*, stationed at Rhode Island, or of letters written by *Augustus Johnson*, stamp officer in New Port, Rhode Island, in either or any of which letters mention is made of *Dr. Ezra Stiles*, of that place, as an incendiary, &c. If you can find these letters, which doubtless were laid before the house, be pleased to forward me a copy of as much of them at least as refer to said *Dr. Stiles*. All things are quiet here ; people live in a mixture of hope and fear.

" I am, Sir,

" Your very humble servant,

" H. WILLIAMSON."

[He was a physician of some eminence in Philadelphia.]

This letter shews that *Dr. Franklin* had many enemies in America, before the troubles commenced ; and had his majesty's ministers possessed but a little better share of understanding, they might have diminished the doctor's weight and influence in that country ; for jealousy and suspicion of those in trust, were, at that time, leading traits in the American character.

junto.

junto. With these, he said, originated the stamp-act, and every other fatal measure. The principles of government which Lord *Bute* had laid down, were perfectly consistent with this policy. Submission to this junto was the tenure by which every ostensible minister held his office : Lord *Bute* so managed his pupil, that while he was led, he thought he was leading.

When Lord *Chatbam* came into office, in 1769, and had differed violently with Lord *Temple* upon that occasion, Mr. *Townshend*, who was made chancellor of the exchequer, offered Mr. *Almon* something handsome, and desired him to ask Lord *Temple*'s leave to accept it. Amongst Mr. *Almon*'s papers there is a memorandum of this matter, and a copy of his letter to Mr. *Townshend*, which was as follows :

" *Piccadilly, August 20, 1766.*

" S I R,

" It is not in language to describe the gratitude with which I am impressed by your last conversation. But it is my misfortune this year, as it was last year, to see my best friends differ. After the maturest consideration, pardon me, Sir, if I say that I cannot think of going to Stowe upon this subject. If Lord *Temple* consents, he must look coldly upon me ever afterwards ; and if he refuses, it is putting him under an obligation to do something better whenever he comes into office. You know his lordship's temper ; he is warm and decided ; particularly at the present moment. I must therefore continue to lament in silence this unfortunate division, anxiously looking forward to better days ; but permit me to assure you, Sir, never forgetting your exceeding kindness and attention to,

" S I R,

" Your very much obliged, and

" Most obedient servant,

" J. ALMON."

During

During the exile of Mr. *Wilkes*, there seems to have been a constant correspondence between him and Mr. *Almon*. The following are copies of some of Mr. *Wilkes's* letters to him.*

" *Paris, Rue des Saint Peres, Feb. 11, 1767.*

" S I R,

" I had the favour of your letter of the 3d, and the two pamphlets enclosed. I grieve exceedingly, both on

* The following letter has been printed, in either some newspaper or pamphlet, therefore it is inserted here by way of note only.

" *Paris, June 5, 1764.*

" Lord *Hertford* gave yesterday a grand dinner to all the English here, except one; and to the true Irish whigs: nor like a good courtier did he omit the new converts the Scots. He did not, however, observe the distinction which is so much in fashion on your side the water; for the true friends of the Hanover family were received, as well as their known enemies. My lot is particular and droll enough. I am the single English gentleman, not invited by the ambassador of my country, on the only day I can, at Paris, shew my attachment to its sovereign; as if I was disaffected to the present establishment. As to the ambassador, I never had the least connection with him, nor indeed wish it; nor at *this* time, with his Scottish secretary (*Hume*), nor at any time with his Scottish chaplain; because an ambassador generally owes his very nomination to ministerial influence, and is almost of course (tho' this does not extend thro' his family) under the direction of the ministers; or perhaps, as to the present case, in all propriety, we ought to say, of the minister, who *behind*, and *between* the curtains, still governs our island. I have never been presented at court, because I should be presented by the English ambassador, and I will not ask any favour of Lord *Hertford*, in the present state of public affairs; tho' as a private nobleman, I should be ambitious to merit, and most fortunate to obtain his friendship, as well as Lord *Beauchamp's*, from their real sterling sense, great intrinsic worth, and what sets off the whole, their amiable manners. I have the protection of the laws, which I never offend; and I am at Paris, like any other foreigner, who has no favour to ask, nor need seek any other security. The eulogy which the noblest of poets (*Churchill*) gives me, that "I neither court the smile, nor dread the frown of kings," is as exact truth here, as you knew it to be while I was at home. The small circle in which I now walk, will however bear testimony to the just tribute of gratitude I pay to the humane virtues of a prince, under whose mild and gentle government, I have met with that protection which an innocent man had a right to expect, but could not find in his own country, under his own sovereign."

+ Mr. *Wilkes* sent to Mr. *Almon* a ludicrous paragraph relative to this Scottish chaplain, importing, that tho' Lord *Hertford* was our ambassador,

on a public and private account, for an article which have seen respecting Mr. *Cotes*. Are you still concerned in the public papers, and in which? I may perhaps have it in my power to serve you essentially. I own that I was not pleased with some things I read, which were ascribed to you, and were more than unfair relative to the late great causes in the part I had acted. All that is now entirely over, and you shall always find me

“ Your friend and humble servant,

“ JOHN WILKES.”

“ P. S. I beg you never to write by the post, but all news, &c. by —.”

“ *Wednesday, March 18.*

“ I am glad of this opportunity by *Brown*, to thank you for the things you sent me, and just to say that I wrote to you a fortnight ago by the post. If you have not received that letter, pray let me know as soon as you can. Pray never write by the post.”

bassador, and *David Hume* his secretary, yet the Rev. Mr. *Trail* administered to the English subjects in spirituals. The paragraph was printed in the London Evening Post. The earl of *Marchmont* moved the house of lords against *Meres* the printer, and the house fined him one hundred pounds for it. Several other printers were afterwards fined every session for some years, one hundred pounds each time they printed a lord's name. Lord *Marchmont* began this business. It might, and it ought to have been a question in the house of commons, whether the house of lords had a right to levy money in this manner? But there are very few real friends to the liberty of the press. Men sometimes talk of it as an inestimable privilege; but their friendship lasts no longer than the occasion. A man had better make his son a tinker, than a printer or bookseller. The laws of tin he can understand, but the law of libels is unwritten, uncertain, and undefinable. It is one thing to-day, and another to-morrow. No man can tell what it is. It is sometimes what the king or queen pleases; sometimes what the minister pleases; and sometimes what the attorney-general pleases.

“ DEAR

" Paris, Rue des Saint Peres,

" DEAR SIR,

April 7, 1767.

" I thank you very much for your letter of the 15th of March, and for the pamphlets which accompanied it. I beg your acceptance of the enclosed, which I believe you will not disapprove. I shall soon send you some other pieces.

" I heartily congratulate you on your recovery, and I desire you to thank Dr. *Brocklesby* from me, for the services he has done, in restoring so good a friend of liberty. I am a great sufferer by Mr. *Cotes*. Pray continue to send me what you print, and especially what you write. I am very busy here about two or three works, which amuse me, and will I hope the public. My History of England advances very much, and I will give it all the perfection my poor abilities can reach. You shall hear from me soon, on some interesting subjects.

" I am entirely of sentiment with our good friends, as to the public. You have been the hero of liberty to the public cause, in all their late publications; but perhaps there are some things respecting the Scottish and English vipers, which you dare not print. They may be too bold, while such a wretch as — is at the head of the king's-bench. If any thing of this kind turns up, send me the MSS. and I will have a few copies printed and sent to you from time to time by —. One thing only must be observed; you must not touch on any thing which respects this country, excepting only the last peace. It would be madness in me, to cut the branch on which I am obliged to sit and sing. I shall always be glad if I can be useful to you, for

" I am yours very sincerely,

" JOHN WILKES."

" DEAR

" *Paris, Rue des Saint Peres.*

" DEAR SIR,

April 30, 1767.

" I received the large parcel you were so good as to send me; likewise the small one, and your letter of April 14. I am glad you have found out so safe a direction. I beg you will write often, and all news of every kind; but never sign your letters. I sent you some copies of my letter to the Duke of *Grafton*, and wrote you at the same time a long letter. I am unalterable in my detestation of the enemies of our country. I wish you to let our friends know how vigorous I think the opposition ought to be, and that I will lend myself to them in every thing. Send me any pieces, or supply me with materials, and I will work them up. If it was thought necessary, I would come to —, to conduct any paper. Pray give Dr. *Brocklesby* a copy of my letter to the Duke of *Grafton*, with my best compliments. You do not mention the nature of your monthly publication. I wish you to explain the plan, and I will assist you as far as I can. I suspect *Bute* means to stand forth openly very soon, as first minister, after this long mock *Mazarinade*. I am ready, if he does. You see by the passages in the letter to the Duke of *Grafton*, I have not spared him; and I will be consistent to the last moment.

" How are Lord *Temple* and *Jemmy Grenville* together? How is *Cotes* with his lordship? The most minute things are interesting: pray do not omit any thing curious. I hope this will find you quite recovered of your late disorder. You must be very careful of yourself in so cold a spring."

" *Paris, Rue des Saint Peres,*

" DEAR SIR,

May 11, 1767.

" I received yesterday the favour of your letter, dated April 30, and the three pamphlets. I am very glad that the public approve of my letter to the Duke of
of

of *Grafton*. I hope it is an earnest of their favour to a much greater work. Is it necessary in all cases, that your name should be in the title-page? cannot you for your own safety, re-print any thing without your name in the title-page, and get it sold by underlings, whom it would be ridiculous to take up and prosecute? You should think of some such scheme, for you at present run great risks. I think the speaker cannot lay hold of you, as there are not even the initials of his name. The house of lords are more dangerous. They are more tender, tho' not more sore nor rotten. I am at your service, to do what you will in the cause of liberty. I sent you a dozen covers to me, by a friend. We are always safe in that way, as well as by ——. Pray send me minutely all the news.

“ I read your plan of the political register with attention, and I will assist you in it. I send you an exact copy of a letter from the King of *Poland* to *Madame Geoffrin*, for your first number. Adieu.” [It was printed in the Political Register.]

“ *Paris, Rue des Saint Peres,*
May 25, 1767.

“ DEAR SIR,
“ I have the favour of your letter of the 12th of May, and I thank you for all the intelligence it contains. I shall from time to time assist you in your new work. I would not have you, a family man, run a risk for any party. You have seen enough of treachery in your own case, as well as mine. I spoke of street-walking publishers, whom it would be ridiculous to take up. We have here a kind of people who go from house to house, and distribute every thing of every kind, in spite of every precaution of government. I should guess that such must in time come among you, for your government is every day getting more and more arbitrary.

“ My History of England has cost me much time and pains. I believe, with you, it will have a great sale;

sale; the period is interesting, and it is done with care. As to the copy, what you propose is very just; but I cannot give myself so much trouble. I will give you my ideas on this head. I will sell the copy of the first volume, which contains the History of England from the Revolution to the accession of the House of Brunswick; a large quarto volume almost finished. It is compiled from materials (besides the old ones) which no historian has seen. The original letters of foreign ministers to Louis the XIVth, and a journal to the death of James II. wrote by himself, which contains a variety of curious anecdotes. I will have six hundred pounds for it; half now, and the other half on the delivery of the volume in January next. If you think it will be of service to you, I shall be glad you undertook this rather than any other person. I do not think there can be a single word libellous in the first volume, tho' may be a great many in the second, which is from the accession of the House of Brunswick to the present time. I have thought of a country house near this place, that I may entirely attend to the perfecting this great work, without any dissipation. This will cost me a good deal, therefore I must have three hundred pounds directly; and I will agree to deliver the first volume complete in January, on the payment of three hundred pounds more. I shall take care that my first volume shall make the nation wild for the rest of the work. I have fully explained my intentions to you as a friend, as well as an honest worthy bookseller. You say I am wrong in bearing so hard on Lord Mansfield, because he has changed sides. He may as often as he pleases, but I never will. Adieu."

" Paris, Rue des Saint Peres,

" DEAR SIR,

May 28. 1767.

" Yesterday I received *Burton's Lessons*. I thank you for your care and attention to serve me. I am impatient to see your first number. I sent you yesterday interesting extracts from the Remonstrances of the Parliaments of this kingdom. I printed
only

only twenty copies when I was at Geneva, and nobody has them. Pray send me all the news. I wish you to write often." [The Remonstrances were printed in the Political Register.]

" *Paris, Rue des Saints Peres,*

" DEAR SIR,

June 22, 1767.

" Your letter of the 12th of June arrived here on the 17th. I am obliged to you for all the particulars in it. I am sorry that the Remonstrances are not yet come to your hand. They are exceedingly curious, and full of manly eloquence. I am sorry you omitted the last part of the note on Lord *Holland*; that respecting *Calcraft* and *Ayliffe*. I send you a copy of poor *Churchill's* will, and of a note respecting *Charles I.* which all the whigs I am sure will highly approve. The two French pieces are very remarkable. Neither have been printed. The second is by *Voltaire*. A friend of mine is soon coming to London, and shall bring you a complete collection of all our treaties with the King of Prussia, with the secret and separate articles in the original French. The public will rejoice at this acquisition; and I will give you a short letter about our breach of faith with the Prussian monarch. The verses I enclose are very good. They are the production of Count *de Laraguais*, who was a good while in England.

" You are a bad man for a plot, to give a direction where a letter should be sent, and not provide for your friend's being out of town, and the letter being sent to you. Some person should be chosen, who has no other letters from Paris, and then there can be no mistake. You are a careless good humoured fellow, and shall never be hanged; tho' a friend of yours may.

" I hear from London, that Lord *Lyttelton* has received from *Sandby* and *Dodsley* three thousand pounds for his History of *Henry II.* The period is not very interesting, except to a Frenchman, from the story of

D

Becket,

Becket, and the late disputes of the clergy here, which are now at an end. You see therefore, you are mistaken when you say five hundred guineas are more than ever were given for such a volume. The period is interesting, and I promise you my work shall be so. I never made a bargain in my life, and I have told you what I mean to have directly. If you accept, send me any paper, which I will sign for the delivery of the MSS. on or before the first of January, and I shall draw on you for three hundred pounds, in one or two months, from the day I sign the paper you send. If you accept, you may advertise directly, and put a N. B. that the subscribers to the *Proceedings*, &c. are desired to send to the publisher's, as soon as the first volume of the *History* appears, who will be entitled likewise to the subsequent volumes; and I will allow you for those volumes the bookseller's price. I am impatient for the letter you promise me of news and politics." [All the pieces mentioned in this letter, were printed in the *Political Register*.]

" Friday, July 10.

" Mr. *Wilkes* presents his compliments to Mr. *Almon*, and will send him the packet of the treaties with Prussia, and a letter relative to them, by a friend who sets out for England next Sunday."

" Paris, July 13, 1767.

" I do hereby engage myself to Mr. J. Almon, Bookseller, in Piccadilly, London, for the first volume of my *History of England*, from the Revolution to the Accession of the House of Brunswick, on the following conditions. Mr. Almon shall accept and pay my bill of this day's date, drawn in favour of Mr. Heaton Wilkes, due on the first day of next September. He shall likewise pay one hundred pounds to my order, on the first day of next October; and three hundred pounds on the second of January, 1768, likewise to my order. I engage to send Mr. Almon a part of the MSS. on the first of next September, and the whole of the copy complete by the second of January, 1768. I shall be entitled to copies of the first volume, for the subscribers to the *Proceedings of the Administration against Mr. Wilkes*, at the bookseller's price.

" JOHN WILKES.

" Paris

" *Paris, July 13, 1767.*

" £200 0 0

" *On the first day of September next, pay to Mr. Heaton Wilkes, or his Order, the sum of two hundred pounds, and you will oblige*

" *Your humble servant,*

" *JOHN WILKES.*"

" *To Mr. J. Almon, Bookseller, opposite to Burlington-house, Piccadilly, London.*

Indorsed on the back, " *Received the contents,*

" *Witness, H. WILKES.*"

" *August 27, 1767.*

" £100 0 0

" *On the first of October, pay to Mr. Heaton Wilkes, or his order, the sum of one hundred pounds, and place it to the account of,*

" *SIR,*

" *Your humble servant,*

" *JOHN WILKES.*"

" *To Mr. J. Almon, opposite to Burlington-house, Piccadilly, London.*

Indorsed on the back, " *Received the contents,*

" *Witness H. WILKES.*"

" *DEAR SIR,*

Paris, July 30, 1767.

" I received the favour of your letter of the 20th, and tho' you do not mention any thing about the Prussian Treaties being come to hand, yet I trust they arrived safe. They are very curious, and several parts of them were never printed. I believe the letter, which accompanies them, is tolerably well guarded. I enclose you two Italian sonnets, which have never been printed, and are truly good. I lose no time in finishing the first volume of my History. I will make it as perfect as I can here, for both our sakes. I know how much my own reputation, and that of the work, depend on the merit of the first volume. Mr. Kearsey wrote to me on the 30th of June, that a gentleman of

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the

the name of *Rice*, had in his possession several valuable materials for a History of England, that he would transmit to Paris, if he knew how. I made my acknowledgments to the gentleman, and to Mr. *Kearfly*, for so kind an offer, and I marked out the best conveyance; but I have not since heard from either. I wish you to shew this letter to my brother, and to desire him to call on *Kearfly* about this business. You must not appear in it. I wish you likewise to desire my brother to send my letter to Mr. *Cotes*, as I hear that he is returned to England.

“ If the political change you mention takes place, I should naturally imagine, that the very idea of a general comprehensive system must include me, my pardon, my return, an indemnity, &c. In such a case, I could correct the press myself; and you, who are an author yourself, know the advantages of that to any work. I will write to Mr. Fitzherbert, as soon as I find the arrangement you mention takes place. I hope that I shall not be forgot, tho’ so long absent.”

“ *Paris, Rue des Saints Peres,*

“ DEAR SIR,

August 13, 1767.

“ I have the favour of your letter of the 29th of July, and the Protests, with the third number of the Political Register. I wrote to you lately, and enclosed two sonnets in Italian. I thank you for your account of the late negotiation. I would have you print it by all means. It will please the public; and those truths should be told. I hope you will print the Letter to the Electors of Aylesbury: but for your own sake, do not let your name appear in the title-page. I have not seen Mr. *Morgan*, or I should have thanked him for his trouble. Adieu.” [The Sonnets, and the Account of the Negotiation, were printed in the Political Register.]

“ DEAR

" *Paris, Rue des Saints Peres,*

" DEAR SIR,

August 28, 1767.

" I hope this will come to your hands time enough to insert the two letters which passed between Dr. *Douglas* and me, relative to the Observations on the Spanish Papers. They are curious, and will amuse. You should print the observations from the second edition, which contains a few trifling additions. I am in daily expectation of receiving from Mr. *Rice* what he promised me relating to my History; which he says is so important and curious, that he wishes me to see it before I finish. It is your interest and mine to have the work as perfect as we can, and therefore I only send you the introduction. I believe it will much please, because the English here, to whom I have read it, are high in their commendations. I wish I could see the proof sheets. You, who are so good an author, know the importance of correcting one's self the proof sheets; how much a work gains by it. Can you not contrive to send me two or three proofs, on good paper, of this introduction only? You know how particularly correct that ought to be. In the end, you will gain by these delays.

" When you reprint the Observations, you should likewise reprint the two Monitors relative to the same subject. They are Numbers 358 and 359. They explain what passed in the House of Lords on this occasion.

" You booksellers live always in a state of jeopardy, like soldiers fighting for their country. Do you take care of the letters of your friends? You should, from time to time, send to some friend's house such letters as these. You never can trust any ministers in our country. The Whigs in power turn Tories; tho' alas! the Tories do not turn Whigs.

" My

" My History becomes my daily amusement. I have a mind, in a short letter to tell the *Man from Wales*, in the Public Advertiser, that I value my reputation for veracity, beyond the paltry fame of being an elegant writer ; that I scorn even hazarding a falsehood, and that I believe it will please no man of any party, but every man of no party, &c. &c. Perhaps this will be right, perhaps not : perhaps a paragraph from a third person would be better. Adieu." [*Dr. Douglas's Letters, and the Monitors, were printed with the Observations.*]

" Paris, Rue des Saints Peres,
Oct. 15, 1767.

" I thank you, my dear Sir, for your letter of October the third. I before acknowledged your favour by Dr. Gem. As to Mr. Rice, I do not know him. Mr. Kearsly wrote to me in his name, and I could not refuse such an offer. I have again desired my brother to call on Kearsly, and to let me know whether any thing is to be sent or not ; and how much longer I am likely to wait. There is not a possibility of imposition ; for I am so well acquainted, that I will judge myself of the importance of all the materials he sends. I am very glad that you approve the Introduction. I wish you to send me the proofs as soon as you can. I have a little addition or two to make. I intended to have sent you a Preface likewise ; but perhaps it is better to leave that till after Rice's affair, and another in agitation here, which is a certainty. The notes on the Dedication to the Bishop of Gloucester, I printed at Naples : they are too impudent, and would bring you to the bar of the House of Lords, and what is worse, to a great fine. We must not yet think of them, nor of the Inscriptions for Kew. The Inscriptions I have long had by me."

[Mr. Wilkes's Notes on Churchill's Poems he transmitted to Mr. Almon from time to time. Some of them

them were printed in the Political Register. The rest never were.]

It will not be improper in this place to say a few words concerning the Political Register, which has been so often mentioned in the preceding letters. It was a monthly publication, partaking in some degree of the plan of a magazine; but principally consisted of politics. Mr. *Almon* having a taste for caricature prints, he indulged this humour occasionally, in several satirical prints, prefixed to the monthly numbers; some of which were much admired. The sale was very considerable; but some circumstances obliged Mr. *Almon* to abandon it, after he had finished the second volume.* One of these circumstances was, printing in one of the numbers, "An eighteen day's journal of Lord *B*'s visit to Miss *V*. in Sackville-street, and to Carlton-house." This gave great offence; and though it was a paper upon which no prosecution could be instituted, yet it was of such a nature, as could not fail bringing on the publisher the most severe resentment, the first opportunity; however frivolous or trifling the ostensible cause might be. The other circumstance was of a nature still more private. It was the publication of a plan for augmenting the army in Ireland. It was the ——'s own plan, written by himself. He shewed it only to General *Harvey*, at the Q——'s H——, who made some corrections in it, but did not take the paper away. In a few days it was printed in the Political Register, as corrected. The day after the publication, the King sent Mr. *Barnard*, jun. to Mr. *Almon*, to know how he obtained that paper? Mr. *Almon* declined, in the most respectful terms, giving an answer to the question. But he rightly foresaw, that this refusal would inevitably draw

* A monthly publication was indeed continued for some time afterwards, under the same name; but Mr. *Almon* had no concern in it.

on him ———. And therefore, with the view of deprecating such consequences, he discontinued the publication. In a short time, this apprehension was verified, in the prosecution of Mr. *Almon* for selling one of *Junius's* letters; a matter in which it could scarcely be said that he had even a distant concern. So eager were the court to seize any pretence for prosecuting him.

Even the publication of the first number of the Political Register, was attended with an extraordinary circumstance. Mr. *Wilkes's* letter to Lord *Temple*, concerning his duel with Lord *Talbot* at Bagshot, was inserted therein. Lord *Talbot* charged Lord *Temple* in the House of Lords, in private conversation, with having furnished it for the Political Register. The charge was made in so harsh, and so abrupt a manner, that Lord *Temple* refused to either admit or deny it. A challenge succeeded; and the matter proceeded so far, that Lord *Temple* solicited Lord *Gower*, afterwards Marquis of *Stafford*, to be his second. But in one of the rooms adjoining to the house, the affair was settled.

Previous to the dissolution of Parliament, which was in March, 1768, Mr. *Wilkes* returned to England, and sent the following letters to Mr. *Almon*.

“ Monday, Feb. 15.

“ Mr. *Wilkes* presents his compliments to Mr. *Almon*, and desires the favour of seeing him to-morrow evening at seven, at Mr. *Churchill's*, Apothecary, in Church-street, Westminster.”

“ Friday Afternoon, Feb. 19.

“ I have enlarged, my dear Sir, the letter you saw, very much, and it will be at your service, as well as a Critique on *Boswell's* Account of Corsica. Supposing you advertise directly, “ To be published on the day
“ of

" of the dissolution of the present parliament, an extraordinary number of the Political Register, containing Remarks on the Speech of the Speaker."

" I wish you would get me the Oxford Letter to Sir Thomas Stapleton and Mr. Lee, with their answer. I will weave them into the work, and set the nation laughing at their expence.

" Remember I am always at your service, for every good work. I go to-morrow to very good lodgings, where I shall always be glad to see you.

" Pray send me by my servant the Introduction to my History. I want to make several additions, and you shall have that, and more, next week. Let me have what sheets you have printed of *M's* book about my case. Let us often meet. You shall have my address to-morrow. Adieu." [The Remarks on the Speaker's Speech were printed in the Political Register, No. 12.]

" Saturday, Feb. 20.

" Mr. Wilkes presents his compliments to Mr. Almon, and intends himself the pleasure of calling upon him to-morrow morning before ten."

" Friday, Feb. 26.

" DEAR SIR,

" I have never seen the Parliamentary Debates of 1744, 1745, &c. which you published. I wish you would send them to me. I should be glad to correct the Introduction to my History, and you shall soon have much more. Why do you not oftener oblige me, by calling here in your walks?"

" DEAR SIR,

" You will be pleased to hear that every thing goes on beyond our most sanguine wishes. All my friends take

take their different departments, and are most zealous in them.

" May I trouble you to give orders for the advertisement of March 10 to be continued in all the public papers, and the new one of Saturday night to be inserted in all the future ones. If you will send to Mr. *Leach*, to-morrow at noon, he will give it you, as it is not yet done.

" I am at Mr. *Hayley's* in Great Alie-street, Goodman's-fields, where I shall be glad to see you.

" I am, dear Sir,

" Your affectionate humble servant,

" *Saturday, March 12.*

" JOHN WILKES."

[Parliament was now dissolved, and Mr. *Wilkes* was a candidate to represent the City of London. The preceding letter relates to that circumstance.]

" *Thursday, March 24.*

" Mr. *Wilkes* begs the favour of Mr. *Almon* to have the enclosed papers inserted in all the public prints, and the advertisement for Middlesex regularly continued. He thanks him most heartily for all his services."

" *Thursday, May 26.*

" Mr. *Wilkes* begs the favour of Mr. *Almon* to send him the new lists; and should be glad Mr. *Almon* would call to-day at the King's Bench, and bring with him the rest of the Political Registers, in which are Mr. *Wilkes's* pieces."

Mr. *Almon* visited Mr. *Wilkes* constantly every week, during the time of his confinement in the King's Bench.

Bench. He was remarkably active and zealous in his endeavours to support Mr. *Wilkes's* elections. While Mr. *Wilkes* was candidate for the City, he subscribed fifty pounds toward the expences, and paid the money instantly. In the Middlesex election, he took the station at Hyde Park corner, the Hercules Pillars, now Lord *Bathurst's*, and paid the coaches himself, which, with other expences at that place, considerably exceeded one hundred pounds. And in support of Mr. *Wilkes's* subsequent elections for Chamberlain, he was always forward and alert. When the Society called the *Bill of Rights* was established, for the liquidation of Mr. *Wilkes's* debts, although his debt to Mr. *Almon* was no contemptible sum, yet Mr. *Almon* sent a receipt to the Society in full of all demands, without taking a shilling. Mr. *Almon* was a frugal man, and thereby he was enabled to do these things. And here it may not be improper to mention, because many reports have been circulated, that Mr. *Almon* was always reimbursed, &c. that it is a positive and incontrovertable fact, Mr. *Almon* never received from any individual, or party, during the whole time he lived in Piccadilly, any pecuniary favours, except ten guineas from Lord *Temple* for his dedication, and one hundred pounds, which Mr. *Aubrey*, now Sir *John Aubrey*, collected for him towards defraying the expences of the prosecution on *Junius's* letters. The expences of the prosecution by attachment, already mentioned, as well as all other expences, whether in support of Mr. *Wilkes*, or concerning any public measure whatever, and they were sometimes considerable, he always paid out of his own pocket. He said nothing about them.

C H A P. V.

Singular Procefs at Edinburgh.—Rights of the Livery of the City of London.—Accident of making Sir Robert Bernard Chairman in Westminster-hall, and Member for Westminster.—Thanks to Serjeant Glynn.—Westminster Remonstrance.—Prosecution of Mr. Almon for selling Junius's Letter.

AMONG the lesser incidents of this period, there was one respecting literary property, which from the singularity of the process, may deserve the notice of the English reader,

In August 1767, Mr. *Almon* published a summary of the speeches of the Lords of Session in Scotland, in the cause between the Duke of *Hamilton* and *Archibald Douglas*, Esq. with an introductory preface by a barrister at law. Soon after, there appeared at Edinburgh, first one edition, and then a second, of the same book, published by Messrs. *Robertson* and *Rudiman*, and *Robert Fleming*. Mr. *Almon* conceiving himself to be injured by these Scotch editions, wrote to Edinburgh, to have proper steps taken. A petition was immediately presented to the Sheriff of Edinburgh, setting forth the case, and praying his Lordship to prohibit the sale of these editions, and to grant warrants for searching the houses, warehouses, and shops of the defendants, that none of the copies on hand, or in the possession of the defendants, might be sold. The Sheriff, upon considering this petition, prohibited the defendants from printing or vending any of the books complained of, and granted proper warrants for searching, all which were executed. The defendants afterwards came before the Court of Session, where Mr. *Almon* met them with actions, &c. At length, the sale of

of both editions being entirely prohibited, the matter was allowed to drop, the defendants paying all expences. And this answered the purpose of Mr. *Almon*, whose edition was thereby the only one in the market.

Another circumstance may likewise be worthy of notice. This was respecting the Livery of the city of London. On Michaelmas-day, 1769, the Livery being assembled, according to annual custom, in Guildhall, for the election of a Lord Mayor, expressed a strong desire to return Mr. Alderman *Beckford* for that high office: but some of the law officers of the city said from the hustings, that there was a bye-law of the Corporation against it, which enacted, "That no person who had served the office of Lord Mayor should serve it *again* within seven years." Mr. *Beckford* had been Lord Mayor in 1763. Whereupon Mr. *Almon* asserted, "That any bye-law made by the Corporation respecting the rights of election by the Livery, was a perfect nullity. The Corporation could make no laws binding the Livery in matters of election. Laws made by the Corporation could bind only the inhabitants of London. But the Livery were not obliged to reside in London: they might reside at York, Bristol, or any where they pleased. They did not forfeit their rights of election by an exterior residence. The Corporation could not, in any sense, be said to derive their powers from the Livery. Therefore since this local law had been brought forward in the way of objection, he said it was become more essentially necessary to persevere in their resolution of returning Mr. *Beckford*."

After a long struggle, Mr. Alderman *Beckford* was elected. He further remarked, "That some Lord Mayors had claimed and had exercised a discretionary power to which he conceived they were not constitutionally entitled. This was, in refusing to hold a common hall when requested by the Livery; and on the indispensable days of holding a common hall, at Midsummer and Michaelmas, for the election of annual

nual officers, in refusing at those times to admit the introduction of any other business. This exercise of power by the Lord Mayor, put the Livery of London into a worse situation than that of any other body of electors in the whole kingdom. There are only two ways, he said, in which the Livery can meet; one ordinary, the other extraordinary. If on the ordinary days they were refused, and the extraordinary was denied, how were the Livery to meet upon any public measure respecting their rights, without incurring the danger of being called a tumultuous meeting, and treated accordingly?" But the election of Lord Mayor being the great question of the moment, the latter argument was not discussed. However, the Lord Mayors have frequently promised, at their elections, that they will call a common hall when requested. But still the right is not ascertained, nor the discretion done away.

The unjust decision of the House of Commons upon the Middlesex election, having spread a general alarm through the kingdom, petitions from several counties and towns were presented to the King, praying a dissolution of the parliament. In this measure of petitioning, Mr. *Almon* was a very warm and active instrument, particularly in Westminster. Perhaps there are few instances, in the ordinary occurrences of life, which so remarkably distinguish the attainment of a great and unexpected object, by a small and fortuitous beginning, as this petition from Westminster. The measure originated (ostensibly at least) in Mr. *Almon*. He produced the petition at a previous meeting of a select number of the electors at the Standard Tavern in Leicester-square. This meeting consisted of a considerable number of respectable tradesmen. There was no gentleman of fashion or rank amongst them. They approved of the petition, and it was resolved to call a public meeting of the whole electors in Westminster-hall. This was the first time that Westminster-hall was used for a public assembly of the inhabitants.

bitants. Next day Mr. *Almon* happened to mention the matter to Mr. *Aubrey*, now Sir *John Aubrey*, as they were talking together at his door, and lamented that they (the electors) wanted a gentleman of rank and consideration to take the chair in Westminster-hall. Sir *Robert Bernard* at that time was accidentally walking towards them, upon the foot pavement in Piccadilly; which occasioned Mr. *Aubrey* to say, "What do you think of him?" meaning Sir *Robert Bernard*; Mr. *Almon* replied, "Very well; but I have very little acquaintance with him. Will you ask him?" Sir *Robert* came up; the matter was explained to him, and he accepted it. This circumstance made him afterwards member for Westminster, as will be explained in a little time. There seems to have been some difficulty about presenting this petition; for *John Calcraft*, Esq. who at this time was in the entire confidence of both Lord *Chatham* and Lord *Temple*, writes thus to Mr. *Almon* about it.

" Sunday, 3d September, 1769.

" After due consideration, 'tis thought most adviseable to send it up by the Sheriffs, that both the great cities * may go in a track. We are very desirous to have it well signed, and truly sensible of your zeal and merit. The visit to Wakefield will be returned to-morrow if his Grace is there: which is, you know, a thing of course. All looks well in this country."

When Parliament met, the petitioners were reprobated by the ministerial members, particularly those of Westminster by Mr. *De Gray*, member for Norfolk. Mr. Serjeant *Glynn* defended the petitioners; and the thanks of the electors of Westminster were given to

* London and Westminster.

Mr.

Mr. Serjeant Glynn for his generous and spirited conduct on that occasion; a statement of which having been printed at the time, the reader will find it in the note.*

The

* January 16, 1770.

Last night there was a full meeting of the committee of the electors of Westminster, at the Standard Tavern, in Leicester-fields; when the chairman acquainted them, the design of that meeting was to consider of a letter of thanks to Mr. Serj. Glynn, for his late manly and spirited defence of the electors of Westminster, and their petition.

Mr. Almon introduced the letter with saying, "The Westminster petition had been abused in a most virulent manner;" that it had been said, "*It was signed by BASE-BORN booksellers, and BASE-BORN people; that they were low mechanics, not fit to enter the gates of his Majesty's palace.*" "What further abuse was intended to be thrown on us, is probably only known to him who thought proper to distinguish us by his displeasure; for Mr. Seajeant Glynn instantly checked him. The worthy Serjeant then, with his usual masterly eloquence, vindicated us and our petition; and exposed the malignity of such foul and unjustifiable expressions.

"Several other petitions have been spoken of with some disrespect; but they have been respectively defended by the Representatives of the towns and counties from which they came. Our petition has not had that honour; for our Representatives, like true courtiers, seem to think their constituents unworthy of their least regard; and had it not been for the worthy Serjeant, the Westminster petition had probably been without an advocate.

"The Westminster petition seems to have been as disagreeable to the court, as any which has been presented; not so much perhaps from its being the first which prayed for a dissolution of the present parliament, as its being the pure and genuine petition of the people, unsolicited and uninfluenced by any great person whatsoever. A petition from Westminster was least expected, because it is honoured with the residence of all the royal family; because such a petition must be under the nose of all the ministers, at the threshold of all the state offices, and in the face of all that part of the nobility and gentry who are enemies to petitions; yet, notwithstanding this great and black cloud of influence, the virtue of the people shone forth superior to all opposition.

"The term BASE-BORN, with which we have been honoured, appertains to *servile*. Therefore the electors of Westminster, and no doubt all the freeholders and electors of England, who are not as rich as ministers of state, or who do not derive their descent from the Norman Bastard, are, in the idea of the Minister's friends, *low, servile people*; that

The king having treated all the petitions with contempt, a second series of applications were made.

These

that is, they are SLAVES, not fit to vote for a Member of Parliament, nor to sign a petition for the redress of grievances. That such was the intended meaning of the term BASE-BORN, is evident from what followed, *low mechanicks, not fit to enter the gates of his Majesty's palace.* I will only observe upon these words, that such low mechanicks as signed the Westminster petition, are the pillars of his Majesty's palace. We pay our debts when they are contracted; we pay our taxes when they are demanded. Can the profligate part of the Great, who value themselves upon their manors and their pedigrees, say as much? It is from the labours, the stock, the traffic of such mechanicks as signed the Westminster petition, that his Majesty's revenue receives its most essential support; that revenue out of which the placeman receives his salary for betraying the rights of the people, and the pensioner the wages of his iniquity.

"The English constitution, the law, the wisdom of those patriots who cemented our rights with their blood, have made no distinction between the freeholder of 40s. a year, and the man of 40,000l. They have equally a right to enter his Majesty's palace, and lay their grievances before their Sovereign; as well as to a representation in Parliament.

"Therefore, Mr. Serjeant Glynn's spirited and seasonable defence of the electors of Westminster in particular, and of the freeholders and electors of England in general, in my opinion, merits our warmest and earliest acknowledgements; and for this purpose, I have drawn up a letter of thanks to the worthy Serjeant, which I will read, and then give to the chairman, to be submitted to your better consideration."

The letter, upon being read, was unanimously approved of, and signed by all present. Five gentlemen were then desired to wait upon the Serjeant with it at ten o'clock this morning; which they accordingly did, and were very politely received.

The following is the letter of thanks; with Mr. Serjeant Glynn's answer.

"SIR,

Standard Tavern, Jan. 15, 1770.

"WE who have the honour to be a committee of the electors of Westminster, to draw up and conduct the business of the late petition from this City and Liberty to his Majesty, having heard that it has been attempted to throw a stigma upon the said petition, by traducing in the most gross and unjustifiable terms the electors who signed it, saying, they were base-born people, and low mechanicks, not fit to enter the gates of his Majesty's palace; and having heard also, that you very spi-

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ritedly

These were distinguished by the additional name of Remonstrances. In these Mr. *Almon* was active as before. The Westminster Remonstrance, which for both argument and language was thought equal, if not superior

ritedly and generously stood up in our defence, and that you checked and reprimanded, as well in a very necessary, as in a gentleman-like manner, the disorderly spirit and wanton malignity that could attempt to fix the *flavish* epithet of base-born, upon any part of the free-born inhabitants of this kingdom ;

“ We desire, Sir, that you will be pleased to accept of our most sincere and hearty thanks, for your seasonable and voluntary services at that critical and not to be forgotten moment.—A moment, Sir, when it was the peculiar duty of our own representatives, and ought to have been their care, to have defended from such foul aspersions, so respectable a number of their constituents, as signed the Westminster petition. A neglect in them which enhances the obligation we confess ourselves under to you, Sir, and if possible encreases that esteem we have always entertained of your great abilities and true patriotism.

“ We should therefore have been wanting in the duty which we owe to ourselves, as well as to Englishmen and posterity, if we had omitted to thus pay our tribute of thanks. Not that we mean it as an incitement to you to persevere in your glorious endeavours to preserve the constitution and laws of this country, for we are certain you never want such incitement ; but we shall be happy if it proves an encouragement to other gentlemen to defend the rights and liberties of their constituents, when either insolently reviled, or arbitrarily invaded.

“ We are, Sir, your very much obliged, and most obedient servants.”

Mr. Serjeant Glynn's Answer.

“ S I R,

“ I beg the favour of you to communicate to the Committee of Electors of the City of Westminster, my most humble and respectful thanks, for the very handsome and obliging terms in which they have been pleased to honour my conduct with their approbation.

“ I claim no merit beyond a faithful discharge of my duty in Parliament, to which I am particularly incited by a grateful sense of the generous and disinterested manner in which that trust was conferred upon me by the freeholders of Middlesex.

“ I should deservedly incur the reproach of ingratitude, if I forgot the support I met with from many of the Electors of Westminster : exclusive of that consideration, I esteem it the duty of my situation, as

superior to any other, was produced by Mr. *Almon*, and unanimously approved at the previous meeting at the Standard Tavern; of which association or club, Sir *Robert Bernard* had been chosen Chairman; and the same was also approved at the general meeting in Westminster-hall, where Sir *Robert* again presided; and afterwards presented to the King at St. James's. The reader will find a copy of it in the note, which it is presumed he will not think undeserving a place in these Memoirs.*

In

of the representatives of the people, to be attentive to the honour and interest of the Electors of this kingdom: so respectful a body as the citizens of Westminster are certainly intitled to the utmost consideration of every well-wisher to the constitution of this country.

“ I have the honour to be, Sir,

“ Your very obliged humble Servant,

“ *Red-lion-square, Jan. 18, 1770.*

“ JOHN GLYNN.”

* *The Humble ADDRESS, REMONSTRANCE, and PETITION of the ELECTORS of the CITY and LIBERTY of WESTMINSTER, assembled in Westminster-hall, the 28th Day of March, 1770.*

“ WE, your Majesty's most Dutiful and Loyal Subjects, the Electors of the City and Liberty of Westminster, having already presented our Humble but Ineffectual Application to the Throne, find ourselves, by the misconduct of your Majesty's Ministers, in Confederacy with many of our Representatives, reduced to the necessity of again breaking in by our Complaints upon your Majesty's Repose, or of acquiescing under Grievances so NEW and so EXORBITANT, that none but those who patiently submit to them, can deserve to suffer them.

“ By the same *secret* and *unhappy* influence to which all our Grievances have been originally owing, the Redress of those Grievances has been now prevented; and the Grievances themselves have been repeatedly confirmed; with this additional circumstance of Aggravation, that while the Invaders of our Rights remain the Directors of your Majesty's Councils, the Defenders of those Rights have been Dismissed from your Majesty's Service—your Majesty having been advised by your Ministers to remove from his Employment, for his Vote in Parliament, the highest Officer of the Law;* because his Principles suited ill with theirs, and his pure distribution of Justice with their Corrupt Administration of it in the House of Commons.

* Lord Camden.

In about a month after, Lord *Sandys* died; and his son, who was member for Westminster, succeeding to the

“ We beg leave, therefore, again to Represent to your Majesty, that the House of Commons have struck at the most valuable Liberties and Franchises of all the Electors of Great Britain; and by assuming to themselves a right of Chusing, instead of Receiving a Member when chosen, by transferring to the Representative what belonged to the Constituent, they have taken off from the Dignity, and we fear Impaired the Authority of Parliament itself.

“ We presume again therefore Humbly to implore from your Majesty, the only Remedies which are in any way proportioned to the nature of the Evil: that you would be graciously pleased to Dismiss for ever from your Councils, those Ministers who are ill suited by their Dispositions to preserve the principles of a Free, or by their Capacities to direct, the Councils, of a Great and Mighty Kingdom—And that by speedily dissolving the present Parliament, your Majesty will shew by your own Example, and by their Dissolution, that the Rights of your People are to be Inviolable, and that you will never necessitate so many injured, and by such treatment, exasperated subjects, to continue to commit the care of their Interests to those from whom they must withdraw their Confidence; to repose their invaluable Privileges in the Hands of those who have Sacrificed them; and their Trust, to those who have betrayed it.

“ Your Subjects look up with satisfaction to the Powers which the Constitution has vested in your Majesty—For it is upon them that they have placed their last Dependence. And they trust that the Right of Dissolving Parliaments, which has, under former Princes, so often answered the purposes of Power, may under your Majesty prove an happy Instrument of Liberty.

“ We find ourselves compelled to urge with the greater importunity, this our humble but earnest application to the Throne, as every Day seems to produce the Confirmation of some old, or to threaten the Introduction of some New Injury. We have the strongest reasons to apprehend, that the Usurpation begun by the House of Commons upon the Right of electing may be extended to the Right of Petitioning; and that under the Pretence of restraining the abuse of this Right, it is meant to bring into dispute, and to intimidate us from the Exercise of the Right itself.

“ But whatever may be the Purpose of others, your Majesty hath in your Answer to the City of London, most graciously declared, *That you are always ready to receive the Requests, and to listen to the Complaints of your Subjects.* Your Majesty condescends likewise to esteem it *A duty to Secure to them the free Enjoyment of those Rights which your Family were called to defend.* We rely therefore on the Royal Word, thus given, that

the title, occasioned a vacancy for Westminster. Mr. *Almon* having gained information of this circumstance immediately after it happened, instantly waited upon Lord *Temple*, and suggested the propriety of electing Sir *Robert Bernard*, in order to shew to the court, that the petitioners were not the canaille and rabble they had been described. His Lordship approved of the measure and the motive, and waited upon the Duke of *Northumberland*. His Grace said, "That if the interest which met at the Standard Tavern adopted it, his approbation should go along with it." The persons who usually met at the Standard Tavern, were called together; and Mr. *Almon* stated to them what he had done, and the success he had met with. Next morning, they waited upon Sir *Robert Bernard*, and solicited him to become their representative in parliament; at the same time assuring him, that they would pay all the expences themselves; he should not pay a guinea. The court and ministry finding the spirit of the people raised so high, they did not dare propose any candidate in opposition; therefore Sir *Robert Bernard* was unanimously elected.

At this time, and for some time previous, there appeared a number of political essays in the public papers, signed *Junius*; which being written in strong, nervous, and elegant language, soon attracted the public attention, and became the subject of general conversation. The ministry supposed Mr. *Almon* knew this writer, and they were not mistaken in this supposition. These essays were frequently copied into the maga-

that our Grievances will meet with full Redress, and our Complaints with the most favourable Interpretation—That your Majesty will never consider the Arraignment of your Ministers as a Disrespect to your Person—A charge confined, by the very terms of it, to this House of Commons, as injurious to Parliaments at large (the Constitution of which we admire, and the Abuse of which is the very thing we lament) or a Request for the Dissolution of Parliament, which your Subjects have a Right to make, and your Majesty to Grant, as irreconcilable to the Principles of the Constitution."

zines,

zines, and other periodical publications. The printer of one of these monthly pamphlets, whose name was *J. Miller*, and resided near Pater-noster-row in the City, advertised his pamphlet (the London Museum he called it) to be sold *also* by *J. Almon* in Piccadilly. Mr. *Almon* gave him no authority for so doing, but it is pretty much the custom (since the metropolis has become so large and populous) for booksellers residing in one part of the town, to advertise their books, &c. to be had *also* of booksellers residing in *another* part of the town. Into one of the numbers of this Museum, *Miller* copied from the newspapers one of the letters of *Junius*, addressed to the King. This letter of *Junius*, the ministers called a libel; and they ordered the attorney-general to prosecute several printers and publishers. When *Miller* sent his Museums to Mr. *Almon's* shop, Mr. *Almon* was out of town; however, he came home in the course of the day, and having heard of the minister's orders to prosecute the printers, he instantly ordered the sale of *Miller's* pamphlets to be stopped, and the unsold copies to be returned. However, the ministerial runners or informers had been too quick, they had bought one or two copies; and the ministers, as it should seem, being now rejoiced that they had caught their enemy, the prosecution was immediately commenced against him; and though, as the reader sees, his concern with the publication was very small and very remote, yet he was brought to trial *before* any of the other printers. His conviction ~~they~~ reckoned certain; and that seems to have been the principal object. Even in striking the special jury, there was an obvious partiality; for although the King was party, several servants of the King's household, and gentlemen in the public offices, were allowed to be of the forty-eight. Mr. *Almon* objected to several of these names, in the order they were mentioned, and said they were servants of his Majesty, who was party in the cause; but his objection was over-ruled; and upon reducing the jury, he was under the necessity of leaving a clerk of the War-office for foreman, as a
 lesser

leffer evil than any of the twelve he was allowed to strike out.

The trial came on before Lord *Mansfield* on the second day of June 1770. The trial having been printed, it is inserted at the end.

In consideration of some extraordinary circumstances in this case, it was the desire of Lord *Chatbam* and Lord *Temple*, to bring the whole matter before the house of lords, not in the way of error, but by petition from the injured party; and Lord *Chatbam* engaged to present the petition. A petition was therefore prepared, briefly stating the whole case. But Lord *Mansfield* heard of what was intended; and found means to divide the opposition upon it: Lord *Chatbam* then finding that he was not to be supported as he expected, the design was laid aside. The following is a copy of the intended petition:

To the right honourable the lords spiritual and temporal of Great Britain in parliament assembled.

“The humble petition of *John Almon*, bookseller, sheweth,

“That in Hilary term 1770 now last past, *William De Grey*, Esq. his majesty’s attorney-general, filed an information *ex officio* in the office of the crown, against your petitioner; charging him with unlawfully, wickedly, seditiously, and maliciously publishing a most wicked, scandalous, seditious and malicious libel, intituled *The London Museum of Politics, Miscellanies, and Literature*; containing among other things *Junius’s* Letter to the ****.

“That in Easter term following, a rule to plead having been given, your petitioner pleaded not guilty, and in the same term your petitioner received a copy of the issue with notice of trial.

That

“ That in the sittings after the said Easter term, the said cause came on to be tried by a special jury of the county of Middlesex; when two witnesses only were produced and examined on the part of the prosecution, who declared they were messengers to the press, employed by the treasury to buy political papers and pamphlets; and who respectively proved buying the London Museum in the shop of your petitioner on the first day of January last, being the day on which the said pamphlet was published, of a young man, who the witnesses apprehended was your petitioner's servant; but neither of them gave any evidence of seeing your petitioner at the time of purchasing the said pamphlet, or of his having any knowledge of the transaction.

“ That your petitioner's council declined examining any witnesses on behalf of your petitioner, but rested your petitioner's defence on the insufficiency of the evidence of the prosecution; which they contended was merely presumptive, and not presumptive in a degree to criminate your petitioner; and submitted many observations to the jury, upon the circumstances attending the evidence produced; insisting that they were the judges of the weight of the presumption; and ought not to convict, if not satisfied in their own minds of the guilt of the defendant.

“ That the judge after having summed up the evidence, informed the jury that they had only to consider if it had been sufficiently proved that the pamphlet in question had been sold in your petitioner's shop; and to be satisfied that the blanks left in the said letter stood for the words suggested by the information, in which case they must find your petitioner guilty.

“ That having received these directions, the jury withdrew, and after a very considerable time returned into court, when *Herbert Mackworth*, Esq. one of the jury acquainted the judge, that the jury had entertained some doubts, and requested to be informed, “ Whether

ther selling in the shop, by a servant, a pamphlet, without the knowledge, privity, or concurrence of the master in the sale, or even without a knowledge of the contents of the libel or pamphlet so sold, be sufficient evidence to convict the master?" To which the judge replied, "That he had always understood, and took it to be clearly settled, that evidence of a public sale, or public exposal to sale, in the shop, by the servant, or any body in the house, or shop, was *prima facie* evidence, to charge the master of the house or shop; though there were no privity or concurrence in him; unless he proved the contrary, or that there was some trick or collusion." And thereupon, after such opinion of the judge, the jury brought in your petitioner guilty.

"That your petitioner's council having in Trinity term last, moved for a rule to shew cause why the verdict should not be set aside, and a new trial granted on the ground of misdirection, the same was argued in his majesty's court of king's bench at Westminster on the 27th of June last; when an affidavit of the said *Herbert Mackworth*, Esq. was tendered to the court (who declined hearing the same read) purporting, that understanding the rule of law to be, that no person could be found guilty of a crime, unless proof was made of an intention to do the fact, which is branded with guilt; and desiring to be informed by the court, whether by any particular provision of the law, relative to publications, proof of sale alone, by any person in the shop of a bookseller, was sufficient to convict the master of the shop; he proposed a question to the judge in the words above stated; and that he did understand by the judge's answer, his doctrine to be, that proof of selling in a bookseller's shop was in law a publishing, although such proof did not extend to shew a personal intention in the master to do such act: and that by such doctrine, he the said *Mr. Mackworth* was induced to concur in the verdict, though the evidence did not convince him that there was any selling
in

in the shop of your petitioner, with his assent, direction, order, or knowledge.* [The affidavit of Mr. Mackworth,

* To the PRINTER, &c.

S I R,

A writer who signs *Zeno*, in answer to *Junius*, says, "It is a lie, that Lord Mansfield attacks the liberty of the press."

I wish, for the honour of the noble judge, that *Zeno* was right. But there is a recent case, which, in my opinion proves *Zeno* to be mistaken. It is the case of *Almon*, the bookseller. He was prosecuted for selling a monthly magazine, containing, among other things, a letter of *Junius*. The real printers and publishers of this letter were also prosecuted. But *Almon*, who had only sold it, in one of the monthly miscellanies, before any prosecution was instituted, and near a month after the original publication, was the FIRST brought to trial. The evidence for the crown did not reach him. The two messengers (who were the evidence against him) only say, they bought the book of a young man—of somebody in the shop.—I have the trial before me.—Who is this young man—who is this somebody? To make *Almon* guilty, nay even to justify the prosecution, was it not necessary to prove that this young man, that this somebody was *Almon's* servant? No such thing was attempted. Is then such a vague description sufficient to convict? Lord Mansfield made it so. In civil cases, I know, the master is answerable for the conduct of his servant; but never before this instant was that doctrine ever known to be held in criminal cases, where the master's concurrence and privity were not proved. If my servant commits a rape, am I to be punished for it? Prove the master's privity, and you make him answerable: without it, you do nothing. When evidence was offered in behalf of *Almon*, Serjeant *Glyn* very properly refused it. Like an able lawyer, and honest man, he rested his client's defence upon the great line of the law, saying, "I am not bound to prove the contrary of what they have not proved." See *Almon's* trial, page 59. Lord Mansfield charged the jury in his usual way, about facts and blanks, reserving the libel (or offence) for the court. The jury doubted two hours, and upwards. What followed has been variously stated. If I were to take some of the accounts which have been published, *Zeno* would say I did not deal fairly by his noble friend, therefore I shall transcribe Mr. Mackworth's affidavit.

In the
King's Bench. }

The King against
John Almon.

Herbert Mackworth, of Cavendish-square, in the county of Middlesex, Esq; maketh oath, that he was one of the special jury impannelled to try this cause; and that this deponent understanding the rule of law to be, that no person can be found guilty of a crime, unless proof is made of an intention to do the fact which is branded with guilt, and desiring to be informed by the court, whether, by any particular provision of the law relative to publications, proof of sale alone, by any person

worth, now Sir Herbert Mackworth, Bart. the reader will find in the note.]

That

son in the shop of a bookseller, was sufficient to convict the master of the shop, without any such intention appearing, this deponent did propound a question to Lord Mansfield in the following words, viz. whether selling in the shop a pamphlet, without the knowledge, privity, or concurrence of the master, in the sale, or even without a knowledge of the contents of the libel, or pamphlet, so sold, be sufficient evidence to convict the master? And this deponent did understand, by his lordship's answer, his doctrine to be, that proof of selling, in a booksellers shop, was, in law, a publishing; although such proof did not extend to shew a personal intent in the master to do such act. And this deponent, by such doctrine, was induced to concur in the verdict, though the evidence did not convince this deponent that there was any selling in the shop of the defendant, with his assent, direction, order, or knowledge.

Sworn in Court,
27th June, 1770.
By the Court.

H. Mackworth.

This was not one of the affidavits which were read when *Almon* received judgment. It was offered when his council moved for a new trial, which the court refused to grant. He was put to ONE HUNDRED AND FORTY POUNDS EXPENCE! He was fined only a nominal sum (6l. 13s. 4d.) but compelled to give security in the enormous sum of EIGHT HUNDRED POUNDS!—for selling a monthly magazine!

“The sentence is irreconcilable to any principle of equity or law. If the man was so criminal as to justify the laying him under a recognizance of eight hundred pounds, his fine ought to be heavy. How disproportionate and inconsistent is such an enormous surety with a mulct of 6l. The inequality or iniquity is apparent. In short, there was no pretence for the taking of any security in such a case. It is impossible to vindicate this sentence in any light, and it ought to produce a parliamentary enquiry, a resolution against excessive sureties, and an act of parliament for that purpose. No man can give a reason for this recognizance; it is oppression, to use a mild term. In short, it looks like an opportunity taken to revenge some *old grudge*, and to be done upon a principle of regulating the press, that is, of laying it under a restraint. And, in truth, a court that can inflict such sentences, would do well to stop the press entirely. This sort of judicature means to gag it.” *Summary of the Law of Libel*, page 32.

Zeno seems fond of asking questions. I hope he will not be offended if I ask him only three.

Why of all the booksellers in the kingdom was *Almon* singled out for selling only?—All the booksellers sell magazines, and all the magazines contained *Junius's* letter.

Why

“ That although the contents of the said affidavit, and the fatal tendency of such doctrine was strenuously urged by your petitioner’s council, the court was pleased to discharge the rule, and confirm the verdict.

“ That on the 30th of the same month of June your petitioner, on the motion of his own council, came up for judgment; and produced and read to the court, the several affidavits of himself, *John Miller*, and *Edward Dilly*, from whose concurrent testimony it appeared, that your petitioner had no concern in the printing or inserting *Junius’s* letter to the **** in the London Museum, that the same was inserted therein without your petitioner’s knowledge: that your petitioner’s name was made use of on the blue cover of the book by the said *John Miller*, the printer and publisher thereof, without your petitioner’s direction or privity; that it is usual and customary for publishers to put the names of booksellers in different parts of the town, to their books, and pamphlets, and to send such books and pamphlets to the shops of those booksellers, for the purpose of promoting the sale. That such was the said *Miller’s* reason for using the name and sending the books to the shop of your petitioner. That as soon as your petitioner saw his name put to the said book, he wrote to the said *Miller*, expressing his disapprobation thereof, and that as soon as your petitioner had an opportunity to examine the contents of the several monthly publications, he gave strict orders to his servant, not to sell the London Museum, nor any of the other monthly magazines, in which was inserted the letter of *Junius*. That your petitioner ordered his servant to take the said books intitled the London Museum out of your petitioner’s shop to prevent the same being sold; and soon afterwards to carry them back to the said *Miller*;

Why was he tried *before* the real printers and publishers?

Was not the law *violated* to convict him?

A Friend to Truth

which

which was done accordingly. The affidavit of *Robert Morris*, Esq. was also read on behalf of your petitioner, who proved his coming to your petitioner's shop to purchase one of the said books, and that your petitioner informed him, and another person who came into the shop whilst he was there for the like purpose, that he did not sell the said book.

" That the court having suggested that affidavits touching the numbers sold might have been produced, declined giving judgment at that time; and on the 2d of July following, on the like motion of your petitioner's council, your petitioner attended again for judgment; when further affidavits of your petitioner and the said *John Miller*, and an affidavit of *Thomas Adams* your petitioner's servant, were prepared, but the court declared that they would not then proceed to give judgment, as the affidavits already produced had great weight in alleviation of the crime, with which your petitioner was charged: and that as the *original* publishers were then under prosecution, the court would not give judgment against your petitioner till they had been tried, that a due proportion of punishment and no more, might light on each respective delinquent.

" That in the sittings after Trinity term the informations against the original printers and publishers of *Junius's* Letter, were tried by special juries of the city of London, and though the facts of printing and publishing were incontestibly proved, the juries conceiving themselves judges of the IMPORT of the paper and the INTENTION of the publishers, *acquitted them all*.

" That notwithstanding these acquittances, your petitioner in the last term received notice to attend for judgment on the 21st of November, but no motion was then made by the council for the prosecution.

" That on the 26th of November another notice was given to your petitioner to attend on the 28th, being the

the last day of that term, when the above-mentioned affidavits were again read, as also the further affidavits of your petitioner, the said *John Miller*, and your petitioner's servant *Thomas Adams*.

" That your petitioner's further affidavit stated the number of books sent in by the said *John Miller* to be three hundred, and the number sold to be between sixty and seventy, and that your petitioner caused a sale to be stopt on some part of the said 1st of January.

" That the further affidavit of the said *John Miller* stated his having lost or mislaid the note or letter sent to him by your petitioner. That your petitioner came to him a day or two after the said 1st of January, and declared to him that he would not sell the London Museum, unless *Junius's* Letter was taken out, which was done accordingly on the books being sent back to him.

" That the affidavit of the said *Thomas Adams* proves the fact of the books being sent into your petitioner's shop in your petitioner's absence. That on your petitioner's return he ordered the said *Thomas Adams* not to sell them, but to carry them out of the shop; that they were carried out of the shop, and in a few days afterwards returned to the said *John Miller*, and that in the mean time none of the said books were sold.

" That notwithstanding it clearly appeared by the whole testimony above stated, that your petitioner was not only totally innocent as to the *intention*, but even took every measure to prevent the sale of the book, after it came to his knowledge that it had been sent into his shop; and notwithstanding your petitioner's council strongly insisted, that as your petitioner's was only (if any) a *nominal* crime, and could therefore merit only the smallest, a mere nominal punishment; yet the court proceeded to pass a sentence on your petitioner, whereby he was enjoined to pay a fine of ten marks to his majesty, and to give security for his good behaviour

for

for two years, himself in the enormous sum of four hundred pounds, and two sureties in the sum of two hundred pounds each.

“ That this sentence, though calculated to appear light and moderate, is, in fact, most heavy, cruel and oppressive; as it amounts to a total prohibition of your petitioner’s following his trade or business of a book-seller. For as it is not in his power to read every book that is published, and if he could read them, as he is wholly incapable of judging what publication would be construed to be a libel, his hands are wholly tied up from selling at all, and the means of getting his livelihood by his trade, or profession, taken from him, without running the risque or incurring the forfeiture of the sum of eight hundred pounds; which would tend to your petitioner’s ruin.

“ Your petitioner therefore humbly prays your lordships to take his melancholy case into consideration, and to afford your petitioner such relief as the nature of his case will admit, and as to your lordship’s great wisdom shall seem meet.

“ and your petitioner will pray, &c.”

When Sir *Richard Aston*, the senior judge, passed the sentence of the court upon Mr. *Almon*, he went out of the line of his duty to shew his loyalty, by reprimanding Mr. *Morris*, who had stated, in his affidavit, that he did not know there was any libellous matter in the Museum; therefore the judge said, he should pay no regard to the affidavit of a man who thought *Juvenius’s* letter no libel: that the paper was, in his opinion, a most malicious, seditious, false, virulent, and rancorous libel, on the most gracious and virtuous king, the most eminent for talents, and the most benignant for humanity, that ever sat on the British throne. Mr. *Morris*, in a public letter addressed to the judge, very properly and very severely retorted upon

upon him, for the unnecessary and unhandsome observations he had made upon his affidavit. Amongst other remarks made by Mr. *Morris*, there is one, in page 37 of his pamphlet, which it may not be improper to copy here. It is in these words: "Whilst the offence of libelling is treated as the most dangerous, hateful, and flagitious, the king is consulted upon the *revenge* which he would choose to take upon his admonishers; for it was manifest, from Mr. Justice *Aston's* speech, in passing the sentence upon *Almon*, that his Majesty was not quite out of the secret of that prosecution." —Letter to Sir *Richard Aston*, by *Robert Morris*, Esq. of Lincoln's-Inn.

A few other remarks the reader will find in a note*. And they are worthy of notice, because they were written

To the PRINTER, &c.

* Let me consider for a moment what the court did in the case of *Almon*. He is prosecuted by information, *ex officio*, for vending the republication of *Junius's* Letter. The Museum which contained this Letter, is proved to be sold by his shopman. The judge (Lord *Mansfield*) tells the jury this is presumptive evidence against the master, and conclusive if not answered. One of the jurors doubts whether the master who was absent, might know of this sale, and asks whether in a criminal case, he is at all events bound to pay so much regard to such presumptive evidence as to convict upon it, unless answered by other evidence? His lordship declares he is. The juror submits, finds the defendant guilty, but is dissatisfied in his own conscience, and swears nothing could have made him concur in such verdict, but the being positively told that such evidence was conclusive upon him. The defendant immediately files affidavits to prove his absence, and ignorance of the publication, and that so soon as he knew it, he forbade the sale, and returned the unfold copies. The republisher and the printer swear that *Junius's* Letter was inserted without the defendant's knowledge, and his name put to the cover without his privity or consent, and that so soon as he discovered it he sent a note expressing his dislike, and desiring his name might not appear there in future. The defendant himself swears to his not being at home when the Museums were brought to his shop; that when he came in and observed his name to them, he immediately sent a note to the printer complaining of it, and soon after, perceiving *Junius's* Letter there, he directly gave orders for stopping the sale, ordered the remaining copies to be put into the garret, and returned them the first opportunity. Another bookseller swears it was customary to put the names of the brethren in the trade to a title-page without asking

written by the author of that celebrated and much admired pamphlet, for which Mr. *Almon* was before prosecuted,

ing leave. *Morris*, a barrister, swears to his calling at the defendant's for one of these Museums, not thinking *Junius's* Letter a libel, but was refused, although he was a supporter of the Bill of Rights, and well known to the defendant as such, and although the copies were not then carried back; and that he immediately afterwards bought one at a neighbouring bookseller's; adding also, that whilst he was in the defendant's shop, a stranger called for the same purpose, and was in like manner refused. And the defendant's shopman swears his confirmation of all these particulars. Four months after this, the defendant is called upon to receive judgment, when these six affidavits are read anew and stand uncontradicted. Lord *Mansfield* retires, and my lord commissioner *Aston* pronounces the sentence of the court. In his doing of this he takes notice that "the defendant had been found guilty of publishing a most wicked, seditious and malignant libel; and had been *fully*, fairly and legally convicted; but the king wanted not to oppress his subjects with cruelty, he meant only to correct their ill-sprung errors. The court were of opinion the affidavits of the republisher and of the defendant, *lessened his guilt*; they did not attend to the others, and would pay no regard to the affidavit of *Morris* who could declare (though in a parenthesis) that *Junius's* Letter was not a libel; but that the *booksellers* in future might not plead ignorance, it was necessary to repeat that *the bare fact of publication was sufficient conviction*. The attorney-general could not be blamed for pushing his prayer for judgment in this cause." The sentence upon the defendant was a fine of 10 marks, and to be bound over for his good behaviour two years, himself in 400l. and sureties in 200l. each.

One may observe that a jury could not be much inclined to favour *Almon*, who could find him guilty as a criminal, without direct proof, upon a presumption drawn from the act of his servant, whilst he himself was absent. The admissibility of such evidence in criminal law might be questioned. And most certainly it was not conclusive upon them, if admitted. They might from some circumstances within their own private knowledge have formed a contrary presumption and have found the defendant not guilty. And if they were directed otherwise, they were misdirected.

But, be this as it may, after the affidavits had been read, it was clear that *Almon* was free from any criminal intent or design of libelling; he stood acquitted *foro conscientiae*, although convicted by law. He was perfectly innocent in the eyes of the court. Indeed I do not understand at any rate how a man found guilty upon mere presumptive evidence can be said to have been *fully* convicted. But nothing excites my astonishment so much as the rejection of a lawyer's affidavit, in point of fact, because he has differed from the court in point of law. The defendant, it seems, is a young man, warm in party, and much with the

prosecuted, *viz.* The Letter on Libels, Warrants, the Seizure of Papers, &c.

During

supporters of the Bill of Rights. In such circumstances he may easily be transported to look upon animated papers against the administration with approbation, and from the prejudice of the times to think nothing too bad can be asserted of the government. He may persuade himself that the whole is corrupt, pernicious, and arbitrary, from the top to the bottom, both in principle and practice. At his age too it is very probable that the enthusiasm of liberty, which young men contract at the university, from reading the republican authors of Greece and Rome, may not be quite worn out. And he may verily think that *Junius* gives every man no more than his due, that no rank or station is above animadversion, and that truth can never be a libel. Now, if this be his sincere opinion, and that it is possible I am well assured from what I know of very sensible men in particular points, and no man can be certain it is not; what can excuse the setting aside his affidavit? Is the court warranted to pronounce the deponent perjured? and yet this they virtually do. There seems to be no foundation or justification for such conduct. Because a man is swayed in speculative, disputable opinions by party or company, does that destroy his credit in plain matters of fact? The injustice of such a proceeding with respect to the defendant is very great, because Mr. *Morris's* affidavit was extremely material; but the infamous imputation thrown upon a gentleman of education, parts, and fortune, from such slight grounds, would scarce be pardonable in Mr. *Rigby* or a set of jolly king's men over claret, and must be a lasting reproach to a bench of grave judges in the sober office of judicature. Nothing that he can write will be too severe a return for such hasty and violent calumny. So extravagant a censure is a disgrace to the robe of magistracy. For the honour of decried juries I believe no twelve laymen could be found who would err so widely from the simple line of impartial justice. The king's bench know that Mr. *Morris's* opinion was not singular; for two juries, that is, twenty-four good and indifferent men, had declared themselves of the same sentiment. Were all these perjured? Well then, was Mr. *Morris* under any bias of interest? There is no pretence for the suggestion. And I will venture to affirm, his deposing that *Almon* refused him, who was a friend and acquaintance, the *Museum*, when he called, and also a stranger in his presence, so confirms the truth of *Almon's* justification, that such deposition could not be set aside, and justice done to him.

The sentence is not only irreconcilable to any principle of equity or law, but is destructive of itself, or *felo de se* as a lawyer would say. If the man was so criminal as to justify the laying him under a recognizance of 800*l.* for his good behaviour for two years, his fine ought to be heavy. How disproportionate and inconsistent is such enormous surety with a mulct of 6*l.* The inequality or iniquity is apparent. In short, there was no pretence for the taking of any surety in such a case. But *that* was the sole object; for, if he will print no more political pamphlets,

During the time that this prosecution was going on, Mr. Calcraft sent to Mr. Almon the following letter :

pamphlets, he suffers nothing from the sentence. The fine or immediate punishment is trifling. The trouble of prosecution and the consequent charge of 140l. which *Almon* was put to, are the actual hardships. It is impossible to vindicate this sentence, in any light; and it ought to produce a parliamentary inquiry, a resolution against excessive sureties for the behaviour, and an act of parliament for the purpose. No man can give a reason for this recognizance. It is oppression, to use a mild term. In short, it looks like an opportunity taken to revenge some old grudge for a former publication, and to be done upon a principle of regulating the press, that is, of laying it under a restraint. And in truth a court that can inflict such sentences, would do well to stop the press entirely. This sort of judicature means to gag it. But if the judges of the king's bench are to keep the keys of the press, and to be an office of inquisition, it is very needful that they should have the power of excluding juries from judging whether books are malicious or seditious, and the authors or publishers of them criminals or not. I do not discommend, therefore, their attempt to reserve to themselves the power of adjudging the crime. The same persons will then find the bookseller guilty, and set the fine upon him, which will be extremely contributory to the end in view. Indeed they can do nothing, unless they can compass this; and with it they may do what they please. At present Mr. *Almon* cannot forfeit his recognizance, before he be convicted of some fresh offence by a jury; for I do not think Lord Mansfield will declare that a contempt of his court (for which he might attach Mr. *Almon*) and much less of the persons of any of its judges, would be, within the meaning of the law, a forfeiture *ipso facto* of such recognizance. Nevertheless I am never sure what his lordship, if so inclined, may not pronounce to be law. If he once can convict a man of a crime, which no jury ever had before them, there is no part of the legal frame of this constitution which he may not mould to his own fancy; and, if the juries are not to judge whether any paper be a libel or not, I am sure a man may be convicted of a crime, without a jury's finding him guilty of it, that is, in spite of his peers and country.

In fine, if once directions or instructions in point of law touching the fact, in criminal trials are not to be left to the judgment of the jury, in the words of *Milton*, " Law and compulsion grow fast upon those things which were governed heretofore by exhortation," and the liberty of the press will be but a name. But I trust, men will not in a plain matter suffer themselves to be talked out of their senses. Let us remember ship-money and the concurrent opinion of the then judges.

PHILELEUTHERUS: ANGLICANUS.

"SIR, *Rempston-Hall, Sept. 2, 1770.*

"I saw Lord Temple yesterday, and had many hours discourse with him. In the course of which I did not fail to renew my sentiments on your subject; and it seems quite in the way to be wished. I will stick to it till completed; for 'tis but justice, and your conduct deserves much more.

"I am your faithful friend,
"J. CALCRAFT."

This letter related to a subscription which was collected by Mr. Aubrey, now Sir John Aubrey, Bart. and which amounted to one hundred pounds exactly. This sum was all the compensation Mr. Almon received for the loss, vexation, trouble, &c. &c. of this prosecution.

CHAP. VI.

Letters from John Calcraft, Esq. to Mr. Almon.

MR. Calcraft, during the remainder of his life, kept a constant correspondence with Mr. Almon. The following are copies of several of his letters to Mr. Almon.

"*Rempston-Hall, Sept. 8, 1770.*

"Surely 'tis wrong at this juncture for the livery to return any others but Townsend and Sawbridge for lord-mayor. I can give you a hundred reasons, and will beg you to take confidence till I see you, and promote it all you can. Lord Temple is convinced. There is great reason to apprehend a war, and that was the cause

cause which assembled ministers. Do write frequently to me here."

" *Rempston-Hall, Sept. 18, 1770.*

" Many thanks are due for your attention, also for your sensible letter of the 13th, which shall have the consideration it deserves. All I will say till we meet, is, that both *Wilkes* and some others have changed their minds within this month. I am reading your pamphlet with the attention it deserves. What will these people do with a war hanging over their heads, which seems inevitable: they apprehend it too, and have ordered twenty guard-ships to be fitted for immediate service. Poor *Bucks* are not you sorry! Do tell me when parliament meets, and if Lord *Northington* was sent for to town. A short time must clear all these mysteries."

" *Ingress, Saturday Evening.*

" Three expresses to-day, notifying the melancholy event of Lord *Granby's* death*, have given me so severe a shock, I scarce know what I write; yet I will thank you for your letter, and beg a continuance of your correspondence. Besides what your letter says, I hear *Wilkes* intends to instruct the members to impeach Lord *Mansfield* and Baron *Smythe*.

" Your intelligence of *Lloyd*† is very correct, and most particularly confirmed by another channel, of which you shall hear more when I see you. And if you have a day or two to spare, I shall be glad to make

* Lord *Granby* died on the 11th of October 1770.

† General *Lloyd*, author of the History of the War in Germany, and other pieces. He died at Hoy in 1783. In the latter part of his life he had a pension from the English government. The intelligence here alluded to, was of a plan which he presented to the king, for the management and government of Great-Britain, Ireland, and America. But as it did not come officially, nor through any of the confidential channels, no notice was taken of it,

it

it agreeable here. I am too old to flatter, and where I profess I am most sincere. Poor Lord *Granby* ! Upwards of thirty years we have lived in strict intimacy. He had many great qualities ; I have ever loved him. Thank God, Lord *Chatham* is pure well again."

" *Ingress, 21st Nov. 1770.*

" The servant was set off before I received your Monday's letter. To-day came the other. If you want bail to-morrow,* I will be counter-security to any body you will get to attend the Court, which my health will not permit ; though I hope to be able to get up to the House to-morrow, where at this time every one should put the best foot foremost. My attack has been in the stomach, and pretty severe ; but 'tis over, I hope. Lord *Temple* has wrote me a most friendly affectionate letter, which pleases me much for many good reasons. Write me all about the Remonstrance to-night. Poor *Sawbridge* is ill of a fever. I write with difficulty, but would not now neglect you."

" *Ingress, Sunday Evening.*

" I thank you for both your letters, which came safe ; and be assured nothing shall prevent my attending Parliament to-morrow. I propose coming by Hayes, and will send to you the instant I get to town."

" *Ingress, June 13, 1771.*

" Do recommend it to Lord *Suffolk* and Tom *Whately* to get on quick with their French, that they may leave off stopping the mail, which was kept at the Post-office till seven this morning, to the great inconvenience of his majesty's subjects."

* The day on which it was expected Mr. *Almon* would have received judgment, for selling *Junius's* Letter. It was put off to the 28th.

" *Rampston*

" *Rempston-hall, 10th Sept. 1771.*

" Many thanks for your friendly and attentive correspondence. Though I am sorry, yet it is right, to know the real situation of my friend *Sawbridge* in the city."

" *Ingress, Sept. 17, 1771.*

" Yesterday came on the election of a Mayor for the City of Rochester, for the year ensuing, when Mr. Alderman *Hulkes* was chosen with the hearty consent of his fellow-citizens; notwithstanding every attempt was used to damp their spirit, and bias their choice in favour of Alderman *Sparkes*, who belongs to the Chest at Chatham, and is an active instrument of administration. This point was carried with great spirit, in spite of every attempt of government, who found they could not succeed, and at last gave up the point. *Hulkes* is above temptation, like yourself; a steady friend to the public, and to me."

" *Chigwell, Sept. 24, 1771.*

" Tell me in a line, by the bearer, what you think of the city business, and any other news that occurs. I return to *Ingress* to-morrow. What is to be done at the Court of Proprietors in *Leadenhall-street* to-morrow?"

" *Ingress, 28th Sept. 1771.*

" Many thanks are due for your very sensible correspondence, and kind attention to me. I receive them thankfully, because I have great satisfaction in the proofs of your friendship. Our opinions coincide exactly. Success attend your honest endeavours. I hope the venison was good. Lord *Chatbam* has had a fit of the gout, but is perfectly well again. Pray continue to write. Is *Dyson* recovered? When does Parliament meet? What made stocks fall so yesterday?
Is

Is it true, Lord Temple and his family were at Wakefield Lodge races ?

" Believe me

" Your faithful and unalterable friend,

" J. C."

" Chigwell, 2nd October, 1771.

" Our sentiments coincide exactly. Sawbridge was duped by Horne, contrary to all resolutions formed before he saw him. Altogether it is not to be thought of with patience. I am going a tour for a week or ten days. You shall hear where your next will find me. If the treaty is concluded, hostility must be the consequence. There will be too many powers for this court to submit to, mean as they are; or to controul."

" Birmingham, Saturday.

" I have ordered my letters to be sent to your house, and will write you word to-morrow night where to send them. 'Tis not to be described how I have been entertained here. I shall go to Manchester, and then return about the latter end of next week. Oh Cives ! Cives !"

" Lancaster-ball, Sunday.

" Many thanks for your letters. Good success attend you to-morrow. I shall long to hear. I grieve for poor Lord Mayor extremely, and wish all our friends success in the city."

" Northampton, 9th October, 1771.

" Pray send any letters you have for me by the bearer. I lie to-morrow night at Chigwell. In the morning I set out for Ingress, changing horses at the Talbot-inn in the Borough, where you will send any letters that may come after the bearer is dispatched. Have you any news ? How are the stocks ?

" Ingress,

" Ingress, 15th October, 1771.

" I am very thankful for all your letters, and shall be glad to see you here, if you have any spare time. On my late travels, I made some purchases, and have ordered them to be sent to your house. You will forward them carefully here, as they are china, Derbyshire marble, and Birmingham ware. I lament most cordially the follies of our friends, and the misfortunes they daily produce. I will not, however, abate the least particle of that conduct which I think becoming me, let the times be ever so gloomy. Does the Parliament meet before or after Christmas?"

" Ingress, October 25, 1771.

" I am glad you approve I felt it right: and when that is the case, I will never waver. My only business is to make any spare days you have for the country, comfortable to you, because I have a real confidence in, and friendship for you,"

" Ingress, Nov. 11, 1771.

" You did very properly, and I am truly glad to hear his Lordship is so well. On Saturday I go to Dorsetshire; will try to see you as I pass town. Do let me know when the things from Derbyshire come; that I or Gregory * may send you a draft to pay for them, part being his, and part mine. Forward them all here. Does Lord Temple stay in town, or return to Stowe? The Duke of Gloucester is better; the Princess Dowager not."

" Ingress, 14th Nov. 1771.

" You are very good in writing. You cannot do it too often, nor oblige me more. I will try to see you in town. However, my direction is to Rempston-hall.

* Robert Gregory, Esq. elected member for Rochester in 1774. He lived at Chigwell.

I saw

I saw *Adair* and *Jebb* yesterday : there are no advices from the Duke of *Gloucester* since the 25th, and they have many apprehensions."

" *Ingress*, 29th Dec. 1771.

" Many thanks to you for your correct and constant intelligence. If Mr. *Hamilton* * is in town. I should like to hear what he thinks will be the consequence. What childish stories do they propagate? You cannot conceive either the questions I am asked, or the innumerable reports about Lord *Temple*."

" *Ingress*, Jan. 13, 1772.

" Your dispatch yesterday is very interesting.† The marriage makes it impossible for ministers to gratify

* Right Hon. *W. G. Hamilton*.

† The following is a copy of it.

" *Piccadilly*, Jan. 12, 1772.

" The ministry have been a good deal alarmed by a speech made by Lord *Bellamont* in Ireland, in which he abused them very much, and said " That his hon. friend and brother soldier (Col. *Luttrell*) entertained the same sentiments of them ; that they had deceived Col. *Luttrell* throughout ; that he (*Luttrell*) thought with the English nation on the Middlesex election ; that he would declare his opinion on the first day of the meeting of Parliament in England, and call upon the minister to vacate his seat." Col. *Luttrell* held the same language among his friends in Ireland. His resolution to vacate his seat has been mentioned in two ways ; one, that it was formed by consent of the ministry, who think they shall get rid of Mr. *Wilkes* by his being Sheriff. [You may be assured Mr. *Wilkes* will not permit an election. He will say there is no vacancy, and go to the House and demand his seat.] The other is, that he (*Luttrell*) had the Chiltern Hundreds in such a way, he could vacate them when he pleased ; and thinking himself ill-treated, and perhaps not a little angry that his sister is not acknowledged, is determined to distress administration as much as possible.

" With regard to the Chiltern Hundreds, I am certain there is something in it. I have very good reason to believe his seat for *Bossiney* was never properly vacated ; and that Parliament has been imposed upon in that transaction. I mentioned this affair of the Chiltern Hundreds yesterday morning to ——. " *Ha,*" says he, " does Colonel *Luttrell*

tify *Luttrell*. *Bradshaw's* language, and Lord *Shelburne's* visit to the Queen's House on his arrival, confirm your intelligence of that party. Pray tell me, in confidence, what did Lord *Temple's* visits to St. James's mean? Does he talk as loudly in commendation of Lord *North*, as the ministers and their friends boast, at Lady *Primrose's* particularly, as well as other places.

"If you put in paragraphs, put, that Mr. *Francis* is appointed Deputy Secretary at War, and continues his present employment also. It will tease the worthy secretary, as I well know, and oblige me. I will give you my reasons, when you will find more folly in that noble Lord, than even you thought him capable of. This may be an interesting week. Pray continue your attention to your country friend."

"*Ingress, Wednesday.*

"My firm belief is, that Lord *Shelburne* was at the Queen's House. I had it from one of his intimates. Be assured that I never shew a line to any body, that comes from you. I have lived long enough to be

Luttrell threaten them with that?—They would rather let him vacate quietly, than let that affair come to light." He said he knew the affair very well; that Col. *Luttrell* himself had told it him in confidence. Yesterday forenoon Col. *Luttrell* arrived from Ireland. About three o'clock, I saw ———, just as he parted with him in the street, and asked him if it was true about Col. *Luttrell*? His answer was, that he himself had just asked *Luttrell* the same question; who said, "That Lord *Bellamont* had declared his own sentiments, but that all the rest had been very much mistated in England." Either Col. *Luttrell* has not formed his plan, or he has a point to carry with the ministry. Opposition mean to lie by, and wait for new events. Mr. *Dowdeswell* said this last Friday to several gentlemen. Lord *Shelburne* has said, within these few days, that though he shall always be happy to act with, and submit to Lord *Chatham*; yet if Lord *Chatham* finds it convenient to retire, he shall think himself at liberty to pursue his own line. There is much meaning in this. The *Shelburnes* are either negotiating, or holding themselves out for negotiation. They are first oars at Buckingham-house. Lord *Temple* is very well. I was at Hayes yesterday. Mr. *Whitehead Keene* is to have a place. Messrs. *Bradshaw* and *Smith* have refused Mr. *D'Oyley's* place."

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caution itself, and to no quarter, more than where you allude. I send you some Kentish brawn, which I trust you will find good. I doubt about *Keene*, but it will be material to me to know. When you hear about the speech, movers and seconders, I shall be glad to know. I am glad there is a prospect of another letter so soon."

" *Ingress, Saturday.*

" Thanks for your letter.

" I was not misinformed ; I knew *Francis* was not Deputy, but wished him to be so ; and to cram the newspapers with paragraphs that he was so. For he is very deserving,

" Remember me most kindly to *E. Temple*.

" I wish you could find out when *Keene* kisses hands, or when the appointment is to be made ; for if it is so, I must take another western journey."

" *Ingress, 25th June, 1772.*

" Many thanks for your letters. They came both together this morning, so that of the 19th had undergone thorough inspection. If this country had any minister of ability, *Fordyce* could not have made these calamities. Both English and Scotch finances would have had earlier attention, and false credit been kept under."

" *Ingress, 3d July, 1772.*

" I continue to recover daily, but am advised not to risk the next winter in England, so shall set out in about two months for Italy. But shall hope to see you more than once in that time. I presume *Lord Temple* is settled at *Stowe*, and hope he was well when you last heard from him."

" *Leeds*

" Leeds Abbey, July 17, 1772.

" Your letters all came safe. I thank you for them. Do continue to write. I flatter myself they believe me firm in my avowed opinions, from which nothing shall drag me. I am always

" Your faithful friend,

J. C.

" P. S. *Hillsborough* is in an awkward situation. But he goes to Ireland the first of next month; he won't resign before, and will get cool by the time of his return. If I know him at all, his delight is a place at court. Et tu *Barrington*! What is twenty, nay thirty years friendship? Who is to succeed *Robert's* at the Board of Trade, and at Harwich?"

" Leeds Abbey, July 27.

" Pray send me the Report of the Lords of Trade, on the Petition of *Walpole*, &c. Does Lord *Hillsborough* resign?"

[This Report was printed by Mr. *Almon*. Lord *Hillsborough* resigned upon it. As soon as his lordship resigned, the sale of the Report was stopped. The Observations upon the Report were written by Dr. *Franklin*, Mr. *Samuel Wharton*, &c.]

" Leeds Abbey, 2d August, 1772.

" Many thanks for your two last letters, &c. concerning which your desire shall be followed. The ministers give a different account of Lord *Hillsborough's* intended resignation, and call it a *political bustle*. Does not his language strike you, to be that of a man very unwilling to go from court; and who is coaxing for another cabinet place to be arranged for him, where he may be snug, and save his credit?

" I am very sorry to read what you say about your health. If country air is good for you, come down here,

here, and have that with retirement in perfection. Remember what I have suffered by neglecting myself, and let it be a warning to you."

" *Leeds Abbey, 5th August, 1772.*

" Gout improperly treated has been the cause of my late sufferings. Do see Dr. *Addington*. He regards you; and will put you in a proper way. On Monday he declared me safe, and ordered me to begin the steel, which I have done, and it agrees.

" The Duke of *Grafton* is the favourite, for he'll do any thing he's bid; and as he prefers the *B——ds*, they'll be kept; so will Lord *North*, to keep them in order."

" *Tuesday, August 11.*

" I hope you are better, and shall be glad to hear so."

" *Ingress, Sunday, August 16.*

" Many thanks for all your letters. I have been extremely ill, and am now scarce able to write. Continue your correspondence. Be assured of my hearty good wishes." (*This was his last letter.*)

Mr. *Calcraft* died at *Ingress*, on the 22nd of August, 1772.

C H A P. VII.

Letters from Lord Mountmorres to Mr. Almon.

" Dear Mr. Almon,

" **TUESDAY**, the 8th of October, 1771, the Parliament met. Lord T. charged the whole of the national misfortunes upon the sums which had been expended on the improvement of the country, and not to the late unconstitutional prorogation. The addresses were carried; the debates ran high; but a venal majority prevailed over reason and argument. Leave was given in the Lords, to Lord Mountmorres, and in the Commons, to Mr. Tighe, to bring in a bill for preventing the inconveniencies which may arise from privilege of Parliament. So barefaced were the proceedings of administration, that a ministerial runner, late at night, followed Mr. Conolly into the Speaker's room, and desired to know, with a magisterial tone, " Why he had quitted the house?" Which so affected that respectable gentleman, that he declined (though before that well disposed to them) to support the address, and left the house. Indiscriminate reflections having been thrown out in the speech, upon the riots in the kingdom, (though confined to two counties) the House in their address thought it expedient to echo these reflections, though the members for the respective counties desired their innocent constituents should be exempted from this indiscriminate misrepresentation, and that the censure might be confined to the two delinquent counties of Down and Antrim.*

" Much yours, &c.

* These two counties have lately afforded the title of Marquis to the Earls of Antrim and Hillsborough.

" Pray

" Pray send me a line directed to Frederick-
street, Dublin, about your proceedings, and the report
of a war."

" *Dublin, Nov. 25, 1771.*

" *Mr. Almon,*

" I send you the earliest intelligence of a resolution
of the House of Commons, in the Committee of Sup-
ply, at nine this evening. Resolved, That the pension
granted to *Jeremiah Dyson*, Esq. and his three sons, is an
unnecessary charge upon the establishment of Ireland,
and ought not to be provided for.

" Much yours, &c.

" M."

" *Dublin, Saturday, Dec. 21,*

" *Mr. Almon,*

11 o'clock at night.

" I send you authentic intelligence. There were
three material alterations made in the Council of
Great Britain in our Money Bill. The Commons
have this moment rejected the Money Bill.

" Much yours, &c.

" MOUNTMORRES."

" A protest by twenty lords soon."

" *Dublin, Dec. 23, 1771.*

" *Dear Mr. Almon,*

" I enclose you, by the first opportunity, a Protest of
the utmost consequence, setting forth the whole state
of the country, signed by twenty lords. It is so long,
that I fear you can only insert the Motion, which you
will please to say was made by me, as it is a very cre-
ditable act. The Protest was drawn up by the advice
and assistance of some of the ablest men of both
Houses; and is the *Manifesto* of the whole party.

I shall

shall beg of you to do me the justice to insert it with my name, in the public prints, as the mover.

" Your much obliged,

" And very humble servant,

" MOUNTMORRES."

" *Dublin, Jan. 14, 1772.*

" DEAR SIR,

" I received your favour yesterday, communicating to me the compliment which the gentlemen of the Standard were pleased to pay to my poor services in this country. I must therefore beg to convey, through you, my warmest thanks and acknowledgments to Mr. House, Mr. Crompton, Dr. Harding, &c. &c. which I hope one day to do in person ; and in the mean time, to tell them, that their good opinion remains strongly impressed upon my mind. It is imagined that nothing material will happen in Parliament here ; after the recess, Opposition will remain upon the defensive. It is thought, that administration will endeavour to introduce a clause into the Revenue Bill, to empower them to appoint five additional Commissioners of Excise.

" I am, dear Sir,

" Your most obedient

" And very humble servant,

" M."

" *Dublin, Feb. 14. 1772.*

" Dear Mr. Almon,

" I received two letters from you under one cover: I have, at your desire, sent you another letter of thanks, to be shewn to the leading men at the Standard ; and I have but one wish to mention to you, which is that nothing more may be put in the papers about me. As to what happens here, it is all natural enough ; but if

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I should

I should be ostensible in England, just now, it would be thought to be done with some intent ; and you well know the complexion of these times, that the tide of popularity is fallen, and that those who wish to be serviceable, must wait for another crisis. This I speak to you, because I know it tallies with your own sentiments. Therefore I had rather the compliment of the Standard were not printed. I am very happy that our Protest meets with approbation among you, and that you were so attentive to the wishes in my last. I hope Lord *Temple* is well : what does he say of our proceedings ? for I am very *covetous* of his good opinion. Believe me to be, dear Sir,

“ Your very humble Servant,

“ M.”

“ *Paris, Oct. 4, 1772.*

“ Mr. *Almon*,

“ I send you authentic intelligence of the arrival of a courier, with the news that the negociation between the Turks and Russians is entirely broken off. I was at Versailles the day the news arrived. It is strongly reported here, that the Swedish revolution was transacted with French money. Most certain it is, that the Swedish ambassador seemed highly caressed by the court, &c. I should be glad you would send me an account of the success of our friends in the city, and any other news.

“ I am dear Mr. *Almon's*

“ Obedient and very humble servant,

“ MOUNTMORRES.”

C H A P. VIII.

Letter from the Author of the Heroic Epistle to Sir William Chambers.—From Dr. Franklin.—Mr. Zubley.—Mr. Haritley.—His Information noticed in the House of Lords. Letter from Mr. Burke.—Letters from Mr. John Lloyd. Answer to Mr. Lloyd's Queries.

" S I R,

" May, 1773.

" **T**HE author of the *Heroic Epistle to Sir William Chambers*, begs leave to express his having received great pleasure, from the very favourable reception the public has given his little poem; which has induced him to meditate a much more important work.

" The exuberance of that imagery displayed in the Original Dissertation, is far from being exhausted. He means, therefore, to make a finished picture, from a very masterly sketch of Sir William's; which is, as yet, untouched by him. This is no less than a Description of the Grove of *Man-chew*, the *Genius of Sorrow*; which in the Chinese language signifies also *Shame*, or *Infamy*.

" For that tongue, in common with all the Oriental ones, Hebrew for instance, and Arabic, comprehends under one term, many various, nay even contradictory significations.

" This he shall prevail on his good friend Dr. Kennicott to prove at large in a learned dissertation, which he means to prefix to this projected poem. The title therefore will be, "*The Grove of Man-chew, and Temple of Infamy*." And he presumes, if he has the good fortune to succeed in the attempt, the subject will fur-

nish him with every possible embellishment. He means, however, to select from the immense fund of *objects*, which the present age supplies, only such characters, whose peculiar demerits to their country, intitle them to the most conspicuous niches in his poetical *Belvidere*."

" N. B. Places are already taken for Sir *John Dalrymple*, and the corrector of his press."

" *Craven-street, Nov. 7, 1774.*

" Dr. *Franklin* presents his compliments to Mr. *Almon*, and sends him a manuscript, which he has perused, and thinks well written; so as probably to be acceptable to the public. If Mr. *Almon* should be of the same opinion, it is at his service."

(This pamphlet was called an Appeal to the Justice and Interests of the People of Great Britain, in the present disputes with America.)

" S I R,

(No Date.)

" By the advice of Dr. *Franklin*, I enclose you a piece, which it is wished may be re-printed in England. It gives me concern, that the passage from Falmouth to London must put you to some expence; but as we have now no other opportunity, but by the packet, this cannot be avoided. The author hopes the sale may defray this, and every expence; and only wishes it may be made as public as possible; and in case the sale should not be answerable, any loss will be ordered to be made good, by the Rev. Mr. *Zubley*, of Savannah in Georgia; who solicits a dozen or two of copies, if any opportunity should offer for Savannah; and if not, by the packet to Charlestown, under cover to the Rev. Mr. *Tennant* of that place."

" *Sodbury*

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" *Sodbury, Gloucestershire,*
Jan. 15, 1775.

" Mr. *Almon*,

" We are buried in snow. I should be obliged to you if you would let me know what is reported about the business of the meeting, viz. whether any material business is to come on upon the 25th or 26th; and again, what may be expected in the second week, viz. Monday the 29th, the 31st, and first and second of February. If you have any other news, pray send it to me.

" I am yours, &c.

" D. HARTLEY."

" Do you hear that the Scotch Militia Bill will be brought forward in the first or second week of the meeting?"

[His information concerning public affairs, both at home and abroad, was in general early, interesting, and authentic; as may be observed from the uniform tenor of these letters: and with respect to America, there is one anecdote, which it may not be improper to relate. A few months previous to the commencement of hostilities, the Duke of *Grafton* was called upon in the House of Lords (the secretary of state not being present) to inform the House, what number of the king's troops were in America? which he answered: he next was asked, what force the Americans had? To this question the Duke replied, that he did not know; but that those who wanted such information, might probably obtain it by applying to Mr. *Almon*. Whether his grace meant this as a sneer, or an acknowledgment of Mr. *Almon's* intelligence, is not now material. It certainly was a confession that ministers knew nothing of the state of their enemy.]

" *August 6, 1775.*

" I am obliged to you for your early communication of the intelligence you have; and wish most ardently that
that

that this opening towards a reconciliation on the part of America may be improved by the ministry here, and prove the means of a lasting peace to this empire.

" I am, Sir,

" Your most obedient and humble servant,

" EDM. BURKE."

[This letter related to the Petition brought from the American Congress by Mr. Penn.]

" SIR,

Bristol, Sept. 21, 1775:

" Having made an excursion into Bucks and Oxon, I did not get here before yesterday, when I had the pleasure to receive your favours of the 15th and 16th inst. and for which I am particularly obliged to you. It is yet very uncertain when I shall leave England. The American business grows daily more serious and important. I am confident, that as the Petition from the Congress has been treated with contempt, it is the last that ever will be presented from that body. I have good reason to believe, that when the fate of the Petition is known at Philadelphia, and the subsidiary treaties to subjugate the Colonies at all events, a system will be adopted by the Continental Delegates, that people here have no idea of. And you may depend upon it, that that assistance which has been privately offered by a foreign state, will be accepted. We have too many instances of faithless assurances, to rely on the most solemn promises of the natural enemies to this kingdom; and certainly nothing can be more agreeable to their wishes, than the present unhappy contest. Can any thinking man be so stupid as to believe, that they will not gladly embrace so favourable an opportunity to check the grandeur and power of Great Britain.

" Although the Americans may be obliged to submit to the deprivation of many enjoyments, yet it will only be for a season: they will rise superior to the oppression

pression and persecution of a set of men, who are pursuing the most effectual measures to destroy the peace and interests of the British empire.

" I am, Sir,

" Your most obedient servant,

" JOHN LLOYD."

Southampton, July 30, 1776.

" DEAR SIR,

" I am thankful for your intelligence. Amongst those who resort here, there are some who are well informed in political matters, from whom I learn, that the French and Spanish courts have given evasive answers to some questions lately asked by the British ambassadors, respecting their naval equipments ; and that in consequence, it has been resolved to fit out a fleet of the line. The lethargy which arises from the general spirit of dissipation, that manifestly pervades the whole kingdom, will prevent the people seeing their danger, till they are brought to the brink of destruction. If you have published any Remembrancer since I left town, direct it for me at Mr. Penford's. May health and happiness attend you. Adieu, and trust that I am sincerely yours,

" JOHN LLOYD."

" Southampton, Aug. 22, 1776.

" DEAR SIR,

" I am informed from good authority, that the Declaration of Independence was not carried unanimously in Congress, and that the dissentient voices were consequential : if so, I think a door may be open for the exercise of that trite maxim in politics, "*Divide et impera*;" upon which, I really believe, administration have still their greatest dependence. I am much obliged to you for your last favour, and I pray that you will acquaint me with every important transaction ; to
justify

justify the request, I have to offer the plea of anxiety, arising from the state of suspense, and to assure you that I am most sincerely yours,

"JOHN LLOYD."

"Southampton, Oct. 9, 1776.

"DEAR SIR,

"Having determined to stay at this place a month longer, I beg leave to renew my request, that when your leisure permits, you will be pleased to favour me with your intelligence. I hope my anxious and interested situation will be received as a plea, in excuse for the trouble I presume to give you. The infamous system of colonial government has lost America. I have no doubt but the independency will be effectually established. It is not in the power of this country to make America an adequate compensation for the injuries she has sustained; therefore no reconciliation can be expected.

"With respect, I am, dear Sir,

"Your most obedient servant,

"JOHN LLOYD."

"Southampton, October 17, 1776.

"SIR,

"I am much obliged to you for your intelligence. The news from Canada is confirmed by the master of a transport from Quebec. By way of France, I have just received a letter from Philadelphia, dated in August last; which says, that Congress are unanimous in their determination to adhere to their independency. That the people at large were resolved to endure with patience every hardship, rather than submit to a re-union; that thousands had offered to march to New York, whenever there should be occasion; that they had received such vast supplies of military stores, that Congress had requested the merchants to import no more.

"I am yours, &c."

"Southampton,

" *Southampton, December 22, 1776.*

" SIR,

" Having in contemplation a scheme of importance, respecting myself, the execution of which principally depends upon the state of affairs between Great Britain and America, I presume to request your candid sentiments, upon the probable consequences of the late events at New York ; and what is thought to be the purport of *Franklin's* mission? And whether there is any just cause to expect a speedy, distant, or no interference of foreign powers, in the civil dissensions of this country?

" Your communication upon these particulars, or any information you may be pleased to give me, will be thankfully received, and gratefully remembered."

The following is Mr. *Almon's* answer to the above queries.

" *Piccadilly, Dec. 28, 1776.*

" SIR,

" My opinion is, that the last affair at New York has made no alteration in the resolution of either side to carry on the war. It has not produced any idea of relaxation here, or of submission there. It has decided nothing and therefore is not material. The war will go on. Much will depend upon who can best winter.*

" Respecting Dr. *Franklin*, any body's information must be all conjecture. It is similar to the Prince of Orange going to Paris, to solicit the assistance of the French against the Spaniards. He will doubtless try to persuade France to acknowledge the independence of America. My opinion has always been, that France

* It is singular, that only two days before this letter was written, Sir *William Howe's* winter quarters were beat up at Trenton, which gave the first turn to the war, in favour of the Americans.

will

will not declare *openly* till 1778 : * at which time our treaties with Brunswick and Hesse will expire, and our finances be pretty well exhausted. But she will assist the Americans *privately*, by permitting her merchants, and all her subjects to do it, in whatever way they find most advantageous to themselves ; and by making all her ports in Europe and America, so many asylums for the American privateers. There can be no doubt that mercantile houses will be established for the reception of most, if not all the American products, and large consignments will be made ; and that the State will encourage this connection and trade as much as possible, and will suffer the American vessels to return home, laden with arms, and other military stores, or whatever they want. Some regulations of this kind either temporary or permanent, I think Dr. *Franklin* is come to frame and establish ; and if not immediately with the French ministry, as party, at least with their connivance and consent, with the merchants as individuals. And he is come early, in order that the articles wanted for the war, may be in America by the opening of the next campaign. Will the two prizes he has carried into Nantz, be sold there ? That will mark a good deal. It is certain, that both France and Spain have ordered more ships of the line to be fitted out. Many people suppose this a consequence of Dr. *Franklin's* arrival : I think it is in consequence of our arming ; but France has another reason for arming ; she certainly means to have a part of the American commerce, and is therefore preparing to protect it : but as I said before, I think this will not happen avowedly until 1778, unless England interferes with a view to prevent it ; and in that case, France is prepared.

“ I am, Sir, yours, &c.

“ J. ALMON.”

* This proved to be the fact, for France did not declare openly until March, 1778.

C H A P. IX.

Letters from Mr. Izard.—Mr. Baron Maseres.—The Marquis of Buckingham.—Sir George Yonge.—The Right Hon. William Gerrard Hamilton.

“ Richmond Green, August 4, 1776.

“ MR. ALMON,

*“ M*ONTEZUMA did not appear in the last Remembrancer; if it does in the next, it will do as well. There is certainly a ship arrived at Glasgow from Virginia, with intelligence to government of a very late date. Mr. Eden has received a letter from his brother the governor, dated the first of July, from on board the Roebuck. I am told that a battery from the shore has obliged Lord Dunmore, according to Lord Suffolk's phrase, to change his position. I am under the greatest anxiety about the operations of the two armies under Washington and Howe; for as to an accommodation, that is I think quite out of the question. The accounts from Canada make me uneasy. I had no thoughts of its being possible to carry armed vessels, by means of machines, called Camels, over the rapids of the river Richlieu or Sorel. What have you been able to learn on this subject? Have you consulted your friend Baron Maseres?

“ I am, &c.

“ RA. IZARD.”

“ Inner Temple, Oct. 19, 1776.

“ Mr. Baron Maseres begs leave to suggest to Mr. Almon, that it might be adviseable to himself and the public, to publish a new edition of Smith's History of New York, now that that province

province is so much the scene of the present unhappy contest. Mr. *Maseres* supposes that Mr. *Almon* has seen his last book, called *Additional Papers*, &c. He freely consents that Mr. *Almon* should re-print any of the papers contained in it. There is a discourse concerning the right of juries, to try the whole matter in issue, on prosecution for libels; that is, to determine the intention of the writer or publisher, as well as the mere fact of publication. This discourse I have taken a great deal of pains about, and several persons have much approved of it. You are welcome, if you think fit, to publish this discourse, either in a separate pamphlet, or in one of your periodical books. Send me all the Remembrancers."

The following letter relates to a point of controversy, and therefore with propriety, as well as necessity, it is entitled to a place in this collection. When Mr. *Almon* published the "*Letters of the Marquis de Montcalm*," which was in the spring of the year 1777, many persons doubted the veracity of those letters. And in particular, the Marquis of *Lansdown* (at that time Earl of *Shelburne*) asserted in the House of Lords, on the 30th of May, 1777, that these letters had been discovered to be a forgery. But the following letter shews, that if they were a forgery, they were an imposition upon a person infinitely more respectable than the publisher, no less than the late Mr. *Grenville* himself; amongst whose papers the noble writer of the following letter found them,

"SIR,

"Having turned in my mind the papers I gave you, I much wish that the short preface might be entirely omitted, and the title be both in French and English, the former first, viz.

"Lettres de Monsieur le Marquis *De Montcalm*,
Gouverneur General en Canada, a Messrs. *De Berryer*,
&

& *De Molé*, écrites dans les Années 1757, 1758, 1759, avec une Version Angloise.

“ And lower in the same page you will put the English thus :

“ Letters from the Marquis *De Montcalm*, Governor General in Canada, to Messrs. *Berryer* and *De Molé*, written in the Years 1757, 1758, 1759, with an English Translation.

“ Be so good as to send it down to me as soon as printed.

“ I am, Sir, your very sincere friend,

“ *Wotton, Sunday.*

“ And humble servant,

“ GEORGE NUGENT GRENVILLE.”

[Now Marquis of *Buckingham*.]

“ *Paris, Oct. 16, 1777.*

“ Mr. *Almon*,

“ The last authentic accounts from Congress, are of the beginning of August ; every thing had a most promising appearance, and there was nothing like dismay to be seen in any part of the Continent. With regard to France, the ministry continue to afford very substantial assistance. Lord *Stormont* complains, Mr. *Forth* affects to bully, the French ministry promise, but nothing is done. It has already continued long, and may much longer ; for some judgment may be formed of future events, when you have to deal with a set of sensible knaves ; but none can be formed of the actions of a fool.

“ I am, &c.

“ RA. IZARD.”

“ *Escomb, Jan. 3, 1778.*

“ SIR,

“ I am obliged to you for the note you sent me. I suppose *Burgoyne* is amongst you by this time. Some
of

of the poor fellows that composed his army, passed by here this week ; others landed at Lyme. There cannot be a stronger mark of the wretched service they were sent upon, or of what they have gone thro', than their expressions: some of them burst into tears of joy at landing ; others, prostrate on the ground, thanked God for being restored to their country. All speak of the humanity of their enemies.

" I am, Sir, yours,

" GEO. YONGE."

The five following are written by the Right Hon. William Gerard Hamilton, to Mr. Almon.

" Mr. Almon,

" I thank you for your letter, and hope you will write to me constantly and particularly. 'Till events happen, I must take up with opinions. Be so obliging, therefore, as to inform me what the court thinks, and what the Americans who are in London think, is the object of Sir William Howe's expedition.

" Aug. 14.

" Yours, &c. &c."

" Mr. Almon,

" I am much obliged to you for your letter ; and beg you would let me know, what is the prevailing opinion, as to the fate of New York. I shall be in town at the meeting of Parliament. I wish to hear from you often. But instead of sending your letters to my house, as usual, be so obliging to direct them to me, at Henry Shelley's, Esq. at Lewes, Suffex. By that means they will reach me more expeditiously.

" Oct. 14.

" Yours, &c."

" Hampton Court, Saturday.

" Mr. Almon,

" I am much obliged to you for your intelligence, and beg the continuance of your correspondence. I

go from Castoisbury to Stowe, about Thursday sevenight,
and if you are then in the country, I shall have the
pleasure of seeing you.

" Yours, &c.

" W. G. H."

" I am much obliged to you for your letters.
Things are now so very interesting, that I wish to know
not only facts, but opinions. What do they think,
who know the intelligence of government? What are
the sentiments of those who form their judgment on
provincial information?

" Aug. 15."

" Mr. Almon,

" I take it for granted you are dead and buried, and
that this note will fall into the hands of your execu-
tors. But if you should happen to be alive, I desire
you would give me a proof of it, by letting me know
what news is at present circulating in London. Is it
true, that there has been a disagreement between the
French admiral and the Americans? And is it not in-
tended to carry on the war against America and France
another year?

" Oct. 31."

C H A P.

C H A P. X.

*Letters from Mr. Sykes—From on Board the Victory—
From the Right Hon. William Pitt—From the Rev. T.
Powys—From Mr. John Kennion—From Mr. Burke—
From Mr. Bradford—From Mr. Wharton—From the
late Lord Temple—From Sir James Caldwell—From
Lord Camden—From Lord Townshend.*

" Liverpool, March 11, 1778.

" DEAR SIR,

" **T**HE inclosed hand-bills are distributing by our worthy mayor, soliciting a subscription towards raising a new regiment. They are doing the same at Manchester. I wish I was able to say any thing in favour of affairs at Liverpool. The late failures, and the whispers of many more, have thrown people in general into the greatest consternation. They all seem afraid of each other. I believe Liverpool feels the effects of the American war, more severely than any town in England.

" I am, dear sir,

" Yours, most sincerely and affectionately,
" JOHN SYKES."

" Liverpool, March 30, 1778.

" DEAR SIR,

" Since my last we have had another great failure, Mr. ——. Other great men are talked of; but I hope it is only talk. Our recruiting for the new corps goes on very well: we have got 600 already. At Manchester they have got 823. I saw the return made last week.

" I am, dear sir,

" Yours, most sincerely and affectionately,
" JOHN SYKES."

Liverpool,

" *Liverpool, April 17, 1778.*

" DEAR SIR,

" What in the name of God do you think of our public affairs at present? To me they seem to have a most horrid aspect. Our affairs in Liverpool are still bad. Another great house is gone within these three days. You know what terrible effects these great failures must have; and that they extend, in some degree, to every individual in the town.

" I am, dear Sir,

" Yours most affectionately,

" JOHN SYKES."

The two following letters were written by a gentleman on board the *Victory*. The fleet returned to Portsmouth on the 27th of June, and sailed again on the 9th of July, 1778.

" I will send you a correct list of Admiral *Keppel's* fleet before or at the time of sailing.

" You are to pay no regard to the pompous homelists published in the papers, but take this as the rule for your own direction in regard to the fleet. The most certain intelligence has made it clear, that the French have twenty-eight sail of the line ready for sea, add six others in the state of our *Princess Amelia*, *Centaur*, *Medway*, &c.

" The fleet of Mr. *Keppel* was twenty sail of the line. With such an unequal force, it would have been madness to have risked a battle, on which the fate of this country inevitably depended. We returned to be reinforced.

" After all my Lord *Sandwich* has asserted, you may depend on it every nerve has been strained to reinforce the fleet. The Duke, of 90 guns, is to join us off
H Plymouth;

Plymouth, I believe tolerably well manned. The Formidable, of 90 guns, well manned, is at St. Helens. The Vengeance, of 74, and the Defiance, of 64, are just come out of Plymouth harbour, ill manned by the gleanings of the fleet, and filled up by a part of the 50th regiment acting as marines. The Thunderer, of 74 guns, is expected from the Downs well manned, and the fleet waits her arrival. By this, you see all our efforts do not produce more than twenty-five sail of the line; but luckily, the Worcester, of 64 guns, arrived from Gibraltar, and as I conclude she will be ordered to join us, we shall in that case, if the Thunderer joins us, make up twenty-six sail of the line. The Terrible is too sickly to be of service, as well as the Shrewsbury; and the rest are all nominal ships, unfit for any other service, than to make a figure on paper. You have now the state of the fleet, in regard to number of ships.

" In regard to men, the Cumberland, Berwick, and Elizabeth, are badly manned, as well as the Vengeance and Defiance. The rest are pretty well; tho' some are growing sickly.

" The want of stores is general; neither masts, sails, or cordage, to refit any of the ships of the line that may be disabled, either in action, or by accident. Small stores of every kind wanting; which is the more shameful, from the profusion of money granted for the article of stores only. Our magazines abroad are totally empty. They cannot fit a long-boat at Gibraltar, Mahon, Antigua, or Jamaica. Too much cannot be said on that subject.

" In respect to late naval intelligence, a convoy of twenty sail of merchant ships, under convoy of two frigates, sailed, the 8th of June, from Bourdeaux, for America. Two frigates are cruising off Guernsey, and by a neutral ship, just arrived, we are told that there are twenty frigates in the Channel and soundings."

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" Mr. *Almon*,

" The French fleet, of thirty-two fail of the line, failed the 3d of July from Brest, and were off the Eddy-stone last Friday. They took the Folkstone cutter. Expresses were dispatched to government immediately. Inclosed is Admiral *Keppel's* line of battle.

" The Vengeance and Defiance are so ill manned, as not to be a match for ships of equal force. You may expect the news of a general action hourly.

" You will receive, by another conveyance, two papers, which are both authentic. I would advise you to print them first in French, as that seems to stamp their authenticity better with the public.

" The minister who has so shamefully neglected our fleet, and admitted so great a superiority to France, deserves all an enraged country can do to him.

" N. B. In the enclosed list are the Terrible and Shrewsbury. The former, by sickness and desertion, has only 320 men; the latter, upwards of 200 sick."

Amongst Mr. *Almon's* papers, are the following note and letter from the present Right Hon. Mr. *Pitt*.

" Mr. *Pitt* desires Mr. *Almon* will have the enclosed paragraph put into one of the morning papers, as soon as he can, without mentioning from whence it comes.

" *Hayes, Saturday, June 14, 1778.*"

" Mr. *Almon*,

" I shall be obliged to you, if you will take care to have the letter I have enclosed to you inserted in all the daily papers to-morrow morning, *signed with my name*. I am desirous to have it printed to-morrow,

H a

and

and wish you to do every thing in your power to procure its insertion.

" I am, yours, &c.

" W. PITT."

" If you cannot get the letter into all the papers, let it be in as many as you can."

" *Chevening, Thursday, Oct. 29.*"

[The letter was addressed to Lord Mount Stuart.]

" *Fawley, near Henley, Oxon,*

" Mr. Almon,

Nov. 7, 1778.

" I have been so frequently wished joy, since the report of the arrival of the good news, that I am indeed anxious to know what degree of joy I ought to feel. I know that it ought to be proportioned to the quantity of rebellious blood spilt. But as we poor country politicians are still quite in the dark, I fly to you, who are the source of political light. To be serious, you will oblige me much, if you will write me a line by the post, just to say what the general opinion is, with regard to the late reports: for which, when I come to town, I will acknowledge myself your debtor.

" I am yours, &c.

" THO. POWIS."

" *Canegllwyd, in Anglesea*

DEAR SIR,

Oct. 12, 1778.

" Having been in this country upon a visit for this last month, I received your obliging letter of the 30th inst. this day, which is the only letter come to my hands since I last saw you. The interruption of private correspondence, is a very dirty procedure in government. My friend Sir John Lindsay sent me an account of the sea action between the two fleets, but not a syllable of any difference amongst the commanders; altho' never

never could reconcile the French being suffered to steal off in the night.

" They now have some frigates out to the westward, which will do damage to our trade, unless they are interrupted by our cruizers. The Liverpool people have been successful with their armed ships, and have picked up at least two hundred thousand of French property already; but the game will soon be over. Public matters and measures are now soared so high beyond my ken, that I have quite lost sight of them; and I content myself with the plain and simple hope, that all's for the best. When I come to town, I will call in opposite to Burlington-gate, to recruit my ideas. I think myself very much obliged to you, and am ever

" Your most obedient servant,

" JOHN KENNION."

" *Liverpool, Oct. 22, 1778.*

" DEAR SIR,

" Sir *W. Meredith* is at present here. Yesterday he sent for me to dine with him; and almost the first word he spoke to me, was to ask when I heard from my old friend *Almon*? What you said, &c. &c. He desired me to tell you, that he finds people's sentiments here very different from what they were twelve months ago, with regard to the American war; and that the people are much more unanimous in his favour, than ever they were. This will give you some idea of our politics at present. As to our trade, we are at present all life; fitting out privateers with the greatest avidity. This may perhaps likewise turn out to be one of our follies; but the great success our adventurers have met with, since commissions were granted against the French, induces every one to hope for the same success. I was much obliged to you for a sight of Mr. *Kennion's* letter. If you any time en-

close

close his letters in mine, I can deliver them without the least inconvenience.

" I am, dear Sir, your affectionate and

" Obligated humble servant,

" JOHN SYKES."

" P. S. You mentioned, in your letter to Mr. Kennion, that Sir H. Palliser saved the French fleet, after the late engagement. I should be glad to know in what manner."

" Highfield, near Liverpool,

" DEAR SIR, 27th Dec. 1778.

" I received your intelligent letter of the 18th *in due course*, for which I am much obliged to you. I agree with you perfectly in your inferences and conclusions. The good creatures of this neighbourhood will not spare Mr. Keppel's life : he is to be shot.

" The French are at this date, I fancy, pretty busy between the Tropics. Two flags, with twelve sail of the line, were seen on the 15th of October, standing to the S. W. by a person who informed me of it. I think the British colours have not another year to fly in the Western hemisphere. I scarcely think it worth while sowing an annual in my garden.

" I mean to be up in all next month : in the mean time, I shall be glad to hear from you, as the pen is dropt out of the hands of my naval friends, at this crisis.

" I am very much

" Your obliged humble servant,

" JOHN KENNION."

" Liverpool, Jan. 20. 1779.

" DEAR SIR,

" Yesterday I received your favour of the 16th, and was much surprized to find the letter you mentioned for

for Mr. *Kennion* not in it. You must either have forgot to put it in the frank, or it has been taken out at the post-office. I have enclosed the frank for your inspection, as it appears evident that the wax has been melted, since it was sealed. The part of a letter-mark XX was in it, but not your letter to Mr. *Kennion*.

" I am yours most affectionately,

" JOHN SYKES."

The following letter relates to the publication of Admiral *Keppel's* Trial.

" *Portsmouth, Wednesday,*

Feb. 3, 1779.

" SIR,

" It would, I assure you, give me great pleasure to serve you in any manner in my power, with regard to the business upon which you have written to me : and if I had been at Portsmouth when your letter arrived, I should have given it an immediate answer. I find that the Admiral leaves the publication of the Trial, with all the emoluments which arise from it, entirely to the short-hand writer ; and does not interfere with him in any part of the disposition. If this had not been his plan, I am very sure he would give you the preference. I am very sensible of your zeal and good wishes, in a cause which naturally interests every man, who has any concern for the public.

" I am, with great regard,

" Sir, your most obedient and humble servant,

" EDM. BURKE."

" The Admiral just tells me, that he is very sorry he is engaged ; for that if you had applied before his leaving town, you certainly should have had it."

" SIR,

Philadelphia, March 20, 1779.

" As a printer, I need not expatiate on the mutual benefit of an exchange of newspapers : I have therefore

fore taken the liberty to send you a number of mine, and request the favour of yours, by such opportunities as may offer ; if none better, please to send them, under cover, to *John Ross*, Esq. at Nantz ; or to St. Kitts, under cover, to Mr. *Thomas Wallace* at St. Eustatius. I shall continue to send you my papers ; and if you think they are not adequate to yours, please to open an account against me, and it shall be punctually paid, as soon as a communication is open between England and America.

“ I must also beg you will send me the Parliamentary Debates, and all other publications interesting to Americans, which shall be thankfully paid for as above. If an epistolary correspondence on the news and transactions of the states of Europe, would be safe and agreeable to you, I shall be glad to hear from you as lengthy as you please ; and you may depend on my giving you, from time to time, the best intelligence the country affords.

“ I am, Sir,

“ Yours, &c.

“ THOMAS BRADFORD.”

“ *Paris, March 20, 1779.*

“ DEAR SIR,

“ I wish to give you some American papers for your Remembrancer ; and if I thought you would not lose them, through the infidelity of the post-office, I would immediately send them : perhaps I may venture to forward them, notwithstanding the expence of the postage, by this conveyance. I shall be obliged to you to favour me with any news of *importance*, that may from time to time arrive in your city ; as you know there is no dependence on newspaper intelligence. You may depend upon my forwarding the American newspapers, as soon as I can get them ; and always upon my friendship. I have done you ample justice, where you would wish to stand well ; and you may fully rely upon my

my exerting my utmost interest in your behalf in America; for I am very sensible of your obliging accommodation in several instances. I shall take proper care of your son's interest in Indiana. You will be furnished with my address here.

" I am, with the truest regard,

" Dear Sir, your faithful friend,

" And most obedient servant,

" S. WHARTON."

" The newspapers are forbidden here; but yet I see the ambassador's, who is as hearty as ever he was in London. His popularity here almost exceeds credibility."

The following letter related to a political pamphlet, written in the month of April, 1779.

" S I R,

" The gentleman who delivers this to you, is a friend to the author of the pamphlet, which accompanies it. As far as I am capable of judging, the subject is handled with a very considerable degree of ability; and though the opinions, toward the latter end, differ a good deal from mine, the public I think may profit by the discussion of them. How far it may suit you in the way of trade, you can best judge; or how far the public is or is not fatiated with this sort of speculation. On these matters, I ought rather to take your opinion, than to attempt to lead you by any of mine, as the author is wholly unknown to me.

" I am, with great regard,

" Sir, your most obedient and humble servant,

" Monday Noon,
Charles-street."

" EDM. BURKE."

" Stowe

" *Stowe, Aug. 24, 1779.*

" Lord *Temple* is much obliged to Mr. *Almon* for the interesting intelligence he has sent; is perfectly well in health, and not a little unhappy at the state of this country.

" ——— quantum mutatus ab illo
" *Hectore* !"

[On the 11th of September, 1779, his Lordship died at *Stowe*.]

" *Sidmouth, near Honiton, Devon.*

" Mr. *Almon*, Dec. 17, 1779.

" I was advised by Lord *Camden* and Lord *Townshend*, as well as by other personages of ability, and high in office, to re-publish, at this very critical period, the Appendix to the Irish Debates, of which you very much approved: it was also strongly recommended to me by Sir *John Duntze*, and other gentlemen concerned in the woollen manufactory of Exeter. You will please to get it advertised in the *Morning Post*, *General Advertiser*, *London Evening Post*, &c. Irish affairs will be a topic of enquiry and conversation in both kingdoms, during the remainder of the sessions. There is no doubt but these pamphlets will have a considerable sale. I send you an original letter from Lord *Camden*, and a copy of another; also two extracts of Lord *Townshend*'s letters.

" I am, dear Mr. *Almon*,

" Your obliged friend,

" *JA. CALDWELL.*"

" *SIR,*

" I had the honour of receiving a packet from you, accompanied with a very obliging letter, about three weeks

weeks ago ; the receipt of which I should have acknowledged sooner, if you had not acquainted me that you was taking a journey into Scotland for about three weeks or a month. This letter, therefore, will probably find you at Castle Caldwell, returned from this expedition.

“ I have had an opportunity, in the mean time, to read over the several tracts ; and I think myself very much obliged to you, for putting into my hands these valuable manuscripts, and particularly that tract that relates to the restrictions laid by England upon the Irish trade. The subject is treated with so much knowledge and good sense, that no disinterested person can read it without immediate conviction ; and I am very happy to find my own sentiments so perfectly concur with yours. Our Parliament are very busy at present, in reviewing their trade-acts that respect Ireland, and propose to grant some indulgences to your country. How far they will go, I can't tell, but I'm sure they will not go far enough ; for the false opinion of self-interest is so prevalent in the minds of our country gentlemen, that I despair of their ever giving up the monopoly of the cloth manufacture ; so that Ireland will still remain a poor country. And yet even this relaxation which they propose, will be worth acceptance ; and will be so far useful, as it will, in some sort, open and enlarge the minds of our narrow politicians ; and teach them, from what has happened in America, that their own welfare is more united with the prosperity of their foreign dominions, than they used to imagine. I am a friend to Ireland, for the sake of England ; upon which principle, she may depend upon my poor endeavours to release her from all injudicious restrictions, and to unfetter all her ports. But, alas ! I am but one insignificant individual.

“ I have the honour to be, with the greatest respect,

“ Your most obedient faithful servant,

“ April 13, 1778, *New
Burlington-street.*”

“ CAMDEN.”

“ SIR,

“ SIR,

“ I am indebted to your obliging correspondence for many letters, and a great deal of interesting intelligence, during the alarming period when the nation was astonished at the appearance of the combined fleet off Plymouth. But I doubt whether I shall easily obtain your pardon for having waited so long before I acknowledged your several favours. It was some time before I knew how to direct to you, for Sidmouth was no market-town; and till I received your last letter, I did not know it was near Honiton. Besides, as your letters contained only intelligence, I wished for an opportunity of paying you in kind, by some information from this side of the country, if I could have obtained it; but now, since the fleets have disappeared, and the common opinion is, that we shall hear no more of them this year, I shall wait no longer, but return my best thanks for your communication, and beg you will excuse my tardiness, and impute it to any other cause, than neglect or indifference. I wish your business, or the health of your family, or any other cause, had called you nearer London, to have given me an opportunity of a personal acquaintance, instead of this distant conversation, by means of an imperfect correspondence; and to have known more fully your sentiments upon the political state of Ireland, which I presume will make an important part of our business next session. Do you intend to publish that tract upon the commerce of that country, that you favoured me with the sight of? I think it would be seasonable and useful. I am happy to concur with all your ideas upon that subject; and that makes me very desirous of further instruction; for he who has for so many years applied his thoughts to one great object, must be the best judge of what measures are the likeliest to attain it. If I have the happiness to hear from you, I promise to thank you for the favour, by a speedy answer;
and

and in the mean time beg leave to assure you that I am,
with the greatest respect,

" Your most obedient faithful servant,

" Sept. 19, 1779,
Camden-Place."

" CAMDEN."

Extract from Lord *Townshend's* letter.

" S I R, *Portman-square, 1st July, 1779.*

" I will not defer any longer my opinion, that what you wish to submit to his majesty, I consider as perfectly right. The critical situation of Ireland, at this period, seems to require the exertion of every friend to both countries; be it to act, to write, and in short, to animate the minds of men to the same salutary purpose, which may save, perhaps recover, the British empire. I am sorry to say, how few I find impressed with a due sense of the present dangers."

Extract from another letter from Lord *Townshend*.

" S I R, *Portman-square, Dec. 1779.*

" I am happy to hear, that your enquiry is soon to appear; and that the interesting lights it will convey to the public, have been applied so opportunely."

" *Liverpool, Nov. 22, 1780.*

" D E A R S I R,

" If you have a moment's leisure, pray tell me what you think of our public affairs, and whether there yet appears any probability of our making up matters with America, upon any honourable terms? You will understand, by the members we have sent up from Liverpool, that we still continue in our old principles, and that we now entertain great hopes, that there will be no opposition to the measures of administration.

" Yours most sincerely and affectionately,

" JOHN SYKES."

C H A P.

C H A P. XI.

Cause and Progress of Printing the Debates in Parliament.—Parliamentary Register.—Remembrancer.—New Foundling Hospital for Wit.—Quits London.—Death of his Wife.—Letters of Dr. Brocklesby.—Governor Pownall.—Marquis of Buckingham.

THE printing of the debates and proceedings of the two Houses of Parliament, is a circumstance that deserves to be particularly noticed. Formerly, the desultory accounts of debates in Parliament were given under feigned names, or with such initials only, as rendered them almost unintelligible to every body, but those persons who were conversant in this kind of writing; which at best was very imperfect, and oftentimes very inaccurate. But this period was distinguished, for breaking down this barrier of exclusion to public information.

It has already been mentioned, (in the note at the foot of page 36) that in the session of 1764, Lord *Marchmont* moved the House of Lords against the printer of the London Evening Post, for having printed a silly paragraph in his paper about Lord *Hertford* and his chaplain *Trail*, and that the printer was fined one hundred pounds, besides fees, for this trifling offence. This little circumstance gave birth to the great one, of regularly printing the whole proceedings of both houses. Resentment was the first motive. Afterwards, the printers were influenced by the hopes of advantage; but in truth, it is not any, for the expence is more than the gain; and if Parliament had taken no notice of this Hydra, it would have killed itself. However, we will state the fact.

When

When the spirit of the nation was raised high by the massacre in St. George's-fields, the unjust decision upon the Middlesex election, &c. Mr. *Almon* resolved to make the nation acquainted with the proceedings of Parliament: for this purpose, he employed himself sedulously, in obtaining from different gentlemen, by conversation at his own house, and sometimes at their houses, sufficient information to write a sketch of every day's debate, on the most important and interesting questions; which he printed three times a week regularly in the London Evening Post. At this time, the late printer, *Meres*, was dead, and the paper was now printed by *J. Miller*, a young man. During two sessions, this practice of printing sketches of the debates continued, without any notice being taken; and Mr. *Almon* furnished them constantly, from the best information he could obtain. Though they were short, they were in general pretty accurate; and their accuracy was perhaps the cause of the printer's security. The Proprietors of the St. James's Chronicle, another newspaper, published three times a week, observing the impunity with which these accounts of the proceedings of Parliament were printed, and perhaps being a little jealous of the success of their rival, resolved upon deviating into the same track. And for this purpose, they employed one *Wall*, who went down to the House of Commons every evening, to pick up what he could in the lobby, in the coffee-houses, &c. It was impossible he should be accurate; however by perseverance and habit, and sometimes by getting admission into the gallery, he improved; and judging, in a little time, that he could supply two newspapers as well as one, he amplified his accounts for the Gazetteer, after having published the heads in the St. James's Chronicle. This encouraged the printers of other papers to follow the example. And *Miller* resolving not to be behind-hand with his competitors, not only employed persons to go to Westminster to collect the debates for him, but he printed the *Votes* also. Parliament now became provoked; and upon motion of Mr. *Onslow* the printers

were

were ordered to attend ; some obeyed, but *Miller* refused. A plan of resistance was settled by *Mr. Almon* and *Miller*. *Mr. Wilkes*, and some others of the city magistrates were consulted. When the messenger of the House of Commons came to take *Miller* into custody, a constable was ready ; and the messenger was carried before the Lord Mayor, charged with an assault, as had been pre-concerted. *Mr. Wilkes* and *Mr. Oliver* were also at the Mansion-house. The assault was proved, and the messenger was admitted to bail. The Lord Mayor (*Mr. Grosby*) and *Mr. Oliver*, being members of parliament, were committed to the Tower ; but *Mr. Wilkes* brought farther disgrace upon the House of Commons. They did not know what to do with him. At length they contrived an expedient as cowardly as it was contemptible. They made an order for him to attend on the 8th of April ; and then adjourned to the 9th of April, to avoid their own order. During the debates upon this subject, which were very warm, several gentlemen, who were magistrates, declared they would act in the same manner in all such cases hereafter, and if any printers brought the messengers of the house before them, they would commit those messengers. Parliament now finding its own impotency in this business, abandoned the whole question entirely. From this period, the debates in both houses have been regularly printed, with more or less accuracy, according to the ability of the writers, in every diurnal publication in the metropolis. The court, however, have taken their revenge in another way, for they have laid heavy imposts upon these printers in consequence, and newspapers are now become an important article of the revenue.

When the new parliament met, which was elected in 1774, and the dispute with America was approaching to hostilities, *Mr. Almon* resolved to compile and publish himself in monthly numbers, a regular and faithful series of the whole proceedings and debates of both houses of parliament, together with all examinations at
the

the bar, and all papers laid upon the table, under the name of *The Parliamentary Register*. This was the first work of the kind ever attempted; and he was encouraged and assisted in it by persons of the first talents in both houses. He carried on this work to the end of that parliament; since which time the work has been continued by other hands with the same fidelity.

The following year (1775) the war with America commenced. As this was a matter of great national importance, and foreseeing that the most interesting consequences must attend it, he took an immediate resolution, to preserve all the authentic papers, printed on both sides the Atlantic; together with the most faithful accounts of every event; and published them every month, under the name of the *Remembrancer*. The design and the execution were highly approved, and the work continued to the end of the war.

Amongst his other periodical publications, was, the *New Foundling Hospital for Wit*; commonly a volume every year; which met with equal approbation. He afterwards revised, corrected, and methodized the whole, in the form it now appears.

Naturally attached to a sedentary situation, his greatest fault was giving his confidence to unworthy servants, and permitting them to exercise that power which he ought to have kept in his own hands. Nor had he firmness to withstand their solicitations for favours. He was therefore duped, betrayed, plundered and abused by them, according as it suited their occasional views. At length, ill health obliged him to seek for ease and recovery in retirement, which he flattered himself he should there obtain. With this view he quitted his business, in favour of a very worthy and respectable young man (Mr. *Debrett*) and went into the country. But he was scarcely settled there, when he had the misfortune to lose his wife. He left London in June 1781, and Mrs. *Almon* died in August following:

This stroke affected him deeply; and he mentions it in more than one of his Lyrics. On this occasion Dr. Brocklesby wrote him the two following letters.

" *London, Sept. 1, 1781.*

" DEAR SIR,

" I cannot find words to convey my sympathy to you, on account of the irreparable loss you have yesterday sustained. There is no remedy but the affuaging hand of time, that will minister relief, and that is wont to inforce patience, even in the most excruciating torments, both of mind as well as body: It should be some consolation to you, to have left nothing untried, that art, friendship, and every kind office, through life, could procure for her: but by meditating that we must all part, we, after a while, become reconciled to all such events, soon after they happen, between the nearest connections. My kind wishes attend your children, and yourself, for I truly am,

" Dear Sir,

" Your affectionate humble servant,

" RICHARD BROCKLESBY."

" *London, Sept. 4, 1781.*

" DEAR SIR,

" I really feel for your melancholy condition. My advice is after the funeral is over, come to town for a few days. Shift the scene, and do nothing important yet for some time. In conversation I will give you my reasons for your again coming into some business, or other, but I advise none particular, till you have time to look about you; but leave your children in the country, and you may have a bed made up for you at my house, and you will insensibly interest your mind in farther engagements, to alleviate your too anxious concern for one, who is irrecoverable. I sympathise for you

you as a man, though I would have you bear misfortunes as a man. I am with great truth,

" Dear Sir,

" Your obedient humble servant,

" RICHARD BROCKLESBY."

He remained in the country until September 1784, occasionally employing his pen on temporary subjects. The names of the pieces he wrote are not exactly known. The three following notes from Governor *Pownall*, seem to allude to some publications, which he had either confidentially acknowledged, or were publicly ascribed to him.

" *Richmond, April 24, Thursday, 1782.*

" Governor *Pownall* thanks Mr. *Almon* for his last present, on many accounts, especially on those which relate to himself. Wishes much to see Mr. *Almon*. If he comes to town in the course of this week, will be glad to see him at Richmond. Governor *Pownall* has been confined, and not been in town since he saw him last."

" *Richmond, Jan. 4:*

" I am returned out of the country, and should be very glad to see you, if you should come to town, and would come to this place; or if you can't come over, let me know. Also let me know when you can come. How goes on the Memoirs of Lord *Chatham*."

(No Date)

" I shall be glad to see you at Richmond, to thank you for your present of the letter to the minister—Next to talk with you on two or three subjects. That neither you nor I may be disappointed, let me know when you can come. I really wish much to see you."

The following letter is also from Governor *Pownall*, and is indorsed on the back *Received November 29, 1781.*

" You have heard before that Lord G. G— is to go out. He is to have no successor. The office is to drop into Lord *Hillborough's** in part, and in part to the Board of Trade as it was before. They mean to give up the Sovereignty. If it is to be given by a letter from Lord *Hi—gb* the Americans will fear some deceit; like that of his letter which held out as if it gave up taxation. Lord G. G— goes out because he abides by his principles, and will not give up the Sovereignty."

In the month of June 1782, Sir *Cecil Wray* was unanimously elected representative for Westminster, in the room of *G. B. Rodney* who was created a peer; in a manner similar to the election of Sir *Robert Bernard*; all the great interests uniting in one point. The following is Sir *Cecil Wray's* letter to Mr. *Almon* on that occasion.

" June 14, 1782

" Mr. *Almon*,

" I am exceedingly obliged to you for your kind congratulations on my election. The profession you make of your assistance if wanted, as I know to be sincere, demands my acknowledgements. The constitutional manner in which my election was conducted, gives me the highest opinion of my constituents; and I think you know, that I shall, as their representative, thank them in parliament."

" I am your very humble servant,

" *CECIL WRAY.*"

* Lord *Hillborough* was now secretary of state.

[It does not appear upon what occasion the following letter was written.]

" *Stowe, Jan. 1, 1784.*

" SIR,

" I am really ashamed, that I have not sooner answered your letter to me, but I have hardly had one moment of liberty. Be assured, that I feel a lively sense of that disinterested regard, and attachment to my family, which dictated your letter to me. Your information is I know strictly true; but even if it were less important to me than it would be in case of any further proceedings, I should still feel equally obliged to you, for the kindness of your intentions. With these sensations I must once more return you my best thanks, assuring you that I shall always remember it, and that I am,

" With great regard, Sir,

" Your very faithful and obedient servant,

" NUGENT TEMPLE."

[Now Marquis of *Buckingham.*]

C H A P. XII.

Marries again—Returns to London—Prints a Daily Newspaper—Letter from Mr. Macklin, Comedian—Prosecuted by Mr. Pitt—Chosen one of the Common Council—Account of his Conduct in that Situation—Committee on the High Prices of Provisions.

IN the month of September 1784, he married the widow of *W. Parker*, printer of the General Advertiser, and returned once more to London, and to business,

business, taking up his residence in Fleet-street. He left ease and affluence, to encounter fatigue and rescue indigence. On this occasion, Mr. *Macklin* the comedian sent him the following letter, in answer to his application for an order, for a friend, to see his *Man of the World*.

"DEAR SIR,

"Your tenure in the *Man of the World* is long and legal, of full twenty years. You were the first man in this land, who encouraged the author in his hopes of success from that production; therefore in justice he sends you his fiat, which on all occasions will be ready for his old friend *Almon*.

"I sincerely congratulate you, myself, and the public, upon your return to the world of business. You were made for it. The press wants such spirits. It is the guardian of the times, and should be its monitor.

"I have not been on the other side of Temple-bar since your resurrection. Laziness, application, real or fancied illness, hindered me from wishing you joy of your new life in person. But my first visit shall be to discharge that duty.

"I am, Dear Sir,

"Sincerely your friend and humble servant,

"Oct. 28, 1784, "CHARLES MACKLIN."

"Tavistock-row, Covent-garden."

In his new situation as printer of the *General Advertiser*, he was again the object of the enmity of the court. The first prosecution against him, was brought by Mr. *Pitt*, for printing a paragraph, which it is more than probable, any other minister would have despised. He brought an action against Mr. *Almon*, as printer of the *General Advertiser*, and another against

against the printer of the Herald for a similar paragraph. The reader will find the trial (which was not printed before) in the appendix.

It was singular, that Mr. *Pitt* should be tempted to seize so trifling an occasion, to commence a prosecution against the friend of his father. Whoever reflects but a moment, upon the enormous sum of the damages pretended to have been sustained, no less than *ten thousand pounds!* will, without suggestion, suspect, that the ruin of the defendant, and not the purity of the plaintiff, was the object contended for. The defence however, was managed with such ability, by the Hon. Mr. *Erskine*, as defeated the intention, if such was the intention; for without aggravating the crime, or injuring Mr. *Pitt*, the jury found only 15*l.* The costs on both sides amounted to 15*l.* more. It has been said that Mr. *Almon* was supported in this affair; but it is totally untrue. The whole fell upon himself.

He was not long in Fleet-street, before he was chosen into the Common Council, in which he continued two years. During this time there was only one political question introduced there. This was in the month of October 1787, when a motion was made to grant a bounty by the corporation to seamen to serve on board the fleet, which was at that time equipping, on account of a party of Dutch peasants having detained the person of the princess of *Orange* some hours, as she was going to the Hague. Mr. *Almon* opposed this measure. The heads of his speech as they were printed at the time were as follows. He thought the measure proposed by the motion was very precipitate—there was no information before the court to justify the motion—ministers had begun to arm, but the cause was known only to themselves—parliament was to meet in a few weeks—ministers were accountable to parliament—and would undoubtedly lay their information before parliament—if it then appeared that there were sufficient grounds for arming, it would then be time enough to give the proposed

posed bounty—but until parliament had such information he strongly contended that the motion was crude, inconsiderate and precipitate.

Although the motion was agreed to, the event proved that he was right; for after the nation had been put to a great expence in arming, the ships were all laid up again, and the seamen turned off.

The truth was, as his paper had repeatedly predicted, that the French court did not seriously intend to support the Dutch; and there was not a man in either France, or the Netherlands, who did not laugh at our credulity.

But the principal measure in which he was concerned, during his stay in the common council, was a committee on the high prices of provisions. This committee was appointed on a motion made by Mr. Alderman *Le Mesurier*, who having very humanely taken into his consideration the great hardships, which the poor and middling classes of people laboured under, from the high prices of provisions, had conceived an idea that butcher's meat might be rendered cheaper by substituting fish, and granting bounties for the encouragement of fisheries. The motion being agreed to, and the committee appointed,* the enquiry took a very unexpected turn, and the consideration of fish, which had been the original motive of appointing the committee, became only a secondary matter: for the retail butchers of the metropolis, smarting under the impositions of the salesmen and carcase-butchers, and apprehending the power of redress lay in the corporation,

* The committee being what is called a ward committee, that is, consisting of one commoner chosen out of each ward, Mr. *Almon* was chosen for the ward he lived in; although there were fifteen other common council in the same ward senior to him. It is incredible the ardour which this committee manifested in exploring every latent cause of this national evil; and the number of times they sat upon it. Nor is it paying Mr. *Almon* any compliment at the expence of truth, in saying that he was the principal acting instrument in it.

they

they eagerly embraced the opportunity to state their grievances, flattering themselves with the hope of laying the foundation of some regulations, which might emancipate them from the tyranny and avarice of the opulent upstart. This matter occupied the principal attention of the committee, and for some months absorbed every other consideration.

When the committee was appointed, Mr. *Almon* ridiculed the measure, and called it a subject of speculation, in which every whim might find ample room for indulgence. But after attending the committee a few days, and hearing the evidence of some of the butchers, he changed his opinion, and said that he now began to perceive what he had never suspected before, viz. *that the source of all the mischief lay in London*; that heretofore he had been of opinion that the evils were many, and that they arose from a variety of causes. But after examining some of the butchers, who attended the committee, he declared that not only himself but he believed the public in general, were in an error in their judgment upon this subject, for he now clearly saw that the evil lay in a very small compass, and that it was in a great measure within the jurisdiction of the city of London, but he doubted if the lord mayor had sufficient power to correct it.

Enquiries into the causes of the high prices of provisions have frequently been made, and many remedies have been proposed, all which proving abortive, have thrown a general contempt upon the subject. The circumstance which prevented the success of these enquiries was, they were not made in the place where the evil lay, nor where the proper evidence could be obtained. The House of Lords caused an enquiry to be made in the year 1765, and a committee was appointed for that purpose, and although the evidence before their Lordships tended in some degree to develop the evil; yet as they had not the evidence of the clerks of the markets, they had only a partial and imperfect

imperfect statement. The evidence before the Lords Committee deserves the perusal of those persons who think the subject not beneath their attention. Mr. *Almon* desired that a copy of it might be applied for at the Lords office for the use of the committee, which the city solicitor, whose assiduity and ability reflect the highest honour upon his character, immediately obtained.

The influence which the prices of the London market have over a large part of the kingdom, makes the state of that market a very interesting consideration; the operation of these prices pervading and extending to a greater distance than even credulity may be inclined to credit. All the evidence were in exact unison in their statements of the abuses in, and influence of, the London market.

A discovery of the situation of the evil was a great point gained. On this point all the evidence was clear and indisputable. On this point all other enquiries had failed, because the enquirers had no cognizance of the object. The object lay concealed in a locality, but the effects of that locality were unknown in their example—perhaps unlimited in their extent.

Whatever abuses were committed in the London markets, the magistrates had, or ought to have, a power to correct; and here one short observation may be made, viz. That to correct the abuses was to apply a remedy to all the causes of complaint.

The committee attended to this subject with the greatest diligence. They endeavoured to obtain information from every part of our island. They made their intentions and solicitations known by advertisements in all the public prints. They wrote to the chief magistrates of all the cities and towns. In a word, they were impeded by no fatigue, they were checked by no difficulty, nor dismayed by any refusal. They

They persevered until the sources of enquiry were exhausted.

When the committee had finished these enquiries, Mr. *Almon* produced a system of regulations for the correction of the abuses, which the evidence had stated to be constantly practised in Smithfield market, and in the vicinity of London; which being approved by the committee, a report was made of the whole proceedings, together with the evidence. And the corporation presented a petition to the House of Commons, for leave to bring in a bill, to carry these proposed regulations into effect.

In the House of Commons the petition was negatived by the influence of the salesmen and jobbers, who rented lands near London, of several gentlemen who were members of parliament, at six, seven and eight pounds per acre. These gentlemen feared the loss of their high rents, which must necessarily happen if their tenants were abridged in their practices. Both the landlords and tenants exerted all their influence upon this occasion. They were mutually interested.

This defeat, not being upon the argument, or upon any solid objection to the measure, Mr. *Almon* intended to have revised and new modelled the regulations, with a view to bring the most essential parts of them within the jurisdiction of the magistracy of the city of London, and had begun to consult the common serjeant upon the subject. But next year he was not in the corporation, and therefore the matter entirely dropped.

C H A P. XIII.

A short Account of the Literary Works he had in Contemplation.

HE had several literary works in contemplation, amongst which were the following :

A new edition of Dr. *Campbell's* present state of Europe, with a continuation of each chapter to the epoch of the new Constitution of France. Since the former edition of this work, which was in 1757, there has been such a great revolution in the whole system of Europe, that he conceived a new edition was become necessary, if it were only to shew the wonderful vicissitudes during the last thirty years. And as few men attended more minutely to all public events, so few men were more capable of executing this task.

He had a design of printing the Poems of the *Sackville* family, which had been recommended to him by the present Duke of *Dorset*, in one elegant volume, divided into three Books, viz :

Book I. The Poems of Lord *Buckburst*.

Book II. The Poems of *Charles* Earl of *Dorset*.

Book III. The Poems of the late Lord *Middlesex*.

They would exhibit a fine series of ancient, middle, and modern poetry.

He had published a Collection of the Debates of the House of Commons, from 1742 to 1774, in eleven volumes, that is, from the period at which *Chandler's* Collection ends, to the time at which the Parliamen-

tary

ary Register begins. This work having been entirely out of print for several years, he proposed to revise and correct the same, and to add an account of the proceedings of the House of Lords during the same period, which has not been printed, and for which he had collected many materials; such as speeches which had been printed or circulated in manuscript, scarce pamphlets, manuscript minutes, &c. &c. To which he meant to have added a complete Collection of the Protests of the Lords of Ireland, having obtained a copy from the first upon record from the office in Dublin.

He likewise printed proposals for a Parliamentary History of England, from the accession of *Charles II.* to the year 1742. As the former Parliamentary History (which begins with the earliest accounts) ends with the death of *Cromwell*, the design of this work, with the preceding article, was to complete the series of Parliamentary History to the commencement of his Parliamentary Register. He intended to include all that was material in *Candler*, *Grey*, and the other books, besides a large collection of speeches, pamphlets, letters, papers, &c. &c. which he had been some years making, and which had escaped the vigilance of former editors, who not having been Book-sellers, nor perhaps in the habit of collecting, could not obtain such materials with the same facility.

The following letter of Lord *Moir* he had thoughts of complying with.

“ *Montalto, near Ballynabinch, Ireland.*

“ SIR,

“ I have just received the favour of yours. Direct me as above, *via* Port Patrick. In *Charles* the first's time when the affair of the ship money was agitated, the King desired to have all the arguments made in the Exchequer Chamber for and against, to be

be fairly wrote out for his inspection. The title is as follows :

1. Mr. St. John in behalf of Mr. Hampden.
2. Sir Edward Littleton, solicitor General, his reply.
3. Mr. Holburn's reply to him.
4. Attorney General Banks reply to him.
5. Arguments of Baron Weston.
6. _____ of Sir Francis Crawley.
7. _____ of Sir Robert Berkeley.
8. _____ of Judge Vernon.
9. _____ of Baron Trevor.
10. _____ of Sir George Crooke.
11. _____ of Justice Jones.
12. _____ of Sir Richard Gulton.
13. _____ of Sir John Denbam.
14. _____ of Sir Humph. Davenport.
15. _____ of Sir John Finch.
16. _____ of Sir John Brampton.

" The original copy of 618 small folio pages is now here, and has never been printed ; do you imagine it would be an agreeable wish to the public at this time? Be so good as to give me your sentiments on it,

" I am, fir,

" Your most humble servant,

" MOIRA."

C H A P.

C H A P. XIV.

*Ensnared by an anonymous Correspondent, and prosecuted—
Effects of that prosecution—Dr. Hayter's Essay on the
Liberty of the Press.*

IN the month of October 1788, a violent fever seized upon the King's intellectual powers. Sir George Baker in his examination upon this subject says, that the first discovery he made of the King's malady was in the evening of the twenty-second of October. An event of this importance could not be concealed. In a few days a thousand reports were in circulation. All the public prints, except Mr. *Almon's*, were every day filled with conjectures, elucidations, and accounts of the King's illness. That he was reluctant to print upon this subject appears by the following paragraph, which was inserted in the most conspicuous part of his paper on the eleventh of November 1788, with the words in Italic characters as here copied :

"It is not without the greatest reluctance, that we venture, at length, to trespass beyond those bounds, which *respect* and *duty* had in some measure prescribed. But the public anxiety—the nature and business of a newspaper—compel us to wave that delicacy ; which some of our patrons begin to think we have observed *too strictly*, because our cotemporaries have been *less abstemious*."

All the other public prints, particularly the ministerial ones, had been teeming with paragraphs of various kinds during the two prior weeks. Mr. *Almon* alone hesitated. His reluctance was blamed by the friends of his paper. He may therefore be said to have

have been compelled to deviate into the subject of the King's illness, and to have been obliged to follow the steps of other printers. Yet he forebore to print any anecdotes of the King's private conduct, though they were not unknown to him, or of the occurrences at Cheltenham, which were known to many more. But a short paragraph, which might have escaped almost any observation, sent to him in a hand-writing that had made itself familiar for some weeks past, affecting to be that of a friend, but as it now seems with the sole view of *ensnaring* him, was inserted in his paper on the eighteenth of November 1788; and for which he was immediately prosecuted by the King's Attorney General. As soon as the paragraph was printed, the writer ceased his correspondence, and although the paragraph appeared in other papers, yet Mr. *Almon* only was prosecuted. When a Printer is marked for a victim, it is almost impossible to escape; for if one kind of snare does not succeed, another will be attempted: the bait will be tried in all shapes until the purpose is effected.

The prosecution was commenced in the Star Chamber mode by information *ex officio*.* There is a circumstance

* The information charges the defendant, as all informations of this kind do, with *wickedly and maliciously contriving and intending*. These epithets ought to be proved, but in trials for libels they never are, for they constitute the whole criminality. It is by this rule that all other crimes are adjudged. If one man kills another by accident, although he is charged with murder, and with having *wickedly and maliciously* committed it, yet if the *malice* and the *intention* are not proved, it is but *manslaughter*. Now let us take a view of Mr. *Almon's* paper, from the time he began to print on the King's illness, to the time of printing the paragraph for which he was prosecuted, and let us see if there be any thing that will warrant these severe epithets upon his conduct.

General Advertiser, November 11, 1788.

" His Majesty continued yesterday in nearly the same state as the day before.

" At one o'clock at noon yesterday Sir George Baker and Dr. Warren left Windsor and came to London. It may be depended upon that at that hour the King was not worse.

" Of

cumstance which shews that the ministers took more care and caution in the institution of this prosecution

"Of the number of reports which were in current circulation yesterday, no notice ought to be taken. They injured nobody but the two playhouses. To them they did some injury; for many people thought that both the theatres were shut. The contrary was the fact."

Idem, November 12.

"Lord Onslow was yesterday the lord in waiting, and his lordship attended at St. James's from ten o'clock in the forenoon until six o'clock in the afternoon by order, to give answers to all persons who enquired after the King's health.

"This regulation will be observed every day.

"The Gazette of last night (which is inserted in this day's paper) mentions the state of his Majesty's health in the forenoon. But though other expresses arrived from Windsor subsequent to that account, yet it is with great concern that we are obliged to add they brought no favourable intelligence. His majesty continued in nearly the same state throughout the day.

"The Prince, with an affection that reflects the highest honour upon his character, is unceasing in his assiduities and filial attention. No words can express or describe the anxiety which every beholder sees strongly marked in the countenance of this amiable youth.—The better he is known the higher he is rated.

"While the people are lamenting the indisposition of the King, they are in the same moment with unexampled unanimity acknowledging the amiable and filial virtues of the Heir Apparent. He stands high in the judgment of all. Even the Treasury-runners, scribes, and parasites are abashed, they are obliged to join the general voice.—His Royal Highness has mixed in the world: he knows the people, he loves them: and he has had more experience of *this kind* than any other Prince of his age. His education has been excellent. He is perhaps one of the best classic scholars this day in the kingdom."

Idem, November 13.

"The answer of Lord Onslow, the lord in waiting yesterday at St. James's was, that his Majesty continued in the same state as the day before.

"Nothing can be more indecent than the sort of turn which the ministerial writers have thought fit to introduce in their prints, on the subject of his Majesty's most lamented situation.—While every man of sense, sentiment, or common decency, of whatever description or party, must deplore this melancholy event on the plain grounds of affection and loyalty—we are gravely told that the public solicitude is to be attributed to very different motives; to the apprehension of political changes—or the baser game of stock-jobbing speculation.—Surely dissuasive insinuations should not be mixed with this important subject

K

—nor

tion than they usually observe in the commencement of more important measures. This was, *before the defendant*

—nor a word of party animosity be suffered to discredit the national character at such a moment."

Idem, November 14.

"The King continues in nearly the same state as before.

"Among the other paragraphs yesterday of Treasury fabrication is that of a Joint-Regency.—Absurd! Can ministers really so presume to abridge that power, which, in a case of necessity like the present, can alone belong to the Heir Apparent.

"The prostitution and venality of the ministerial prints was never more conspicuous than in the present alarming situation of his Majesty;—on a subject which of all others ought to be held most inviolate, and concerning which every description of men is equally afflicted; the abandoned miscreants in the pay of Administration in the most disgraceful manner sport with the feelings of the Royal Family, merely for the sake of abusing Opposition.

"The embarrassing silence which was observed at the commencement of his Majesty's indisposition was actually, by some of the ministerial prints, imputed as a fault to the members of the Opposition!—Every liberal mind must feel astonished at such a charge; yet this is but one of the many falsehoods which have been produced on this occasion; and so familiar is this vice to them, that we have forbore to comment on their fabrications, unless when they bear the features, as in the present instance, of marked indecency!

Idem, November 15.

"The message which the Lord in waiting received yesterday from Windsor was in these words—His Majesty has had many hours of quiet and apparently undisturbed sleep—but has not reaped the benefit from it which was hoped for.

"It would be no bad idea to make a collection of all the paragraphs in the ministerial prints, during the last six months; abusing the Prince of Wales, the Duke of Portland, the Duke of Bedford, and all the great men, who refused to become *the tools of the secret Junto*.

"The conduct of the Heir Apparent must be admired by every one. He is watchful at all times. If any new advice, or any treatment is suggested, that affords the least hopes of relief, or even to alleviate the Royal indisposition, he commands it instantly to be done. In short, no son was ever more dutiful to a parent, in the solicitude of his feelings, or in the unwearied attention of his person.

"This is an agreeable reflection to the whole kingdom. For the youth who discovers, in this, as on every other occasion, a most tender heart, and a strong sympathy to all in distress, must make a gentle and just Ruler, whenever Providence calls him to that important situation."

November

fendant was served with any notice, they retained the flower of the bar against him. No less than six

November 16. *Sunday. Idem, November 17.*

“ The answer of the Lord in waiting yesterday at St. James’s, was as follows—His Majesty has had several hours sleep—but is not so well to-day as he was yesterday. However painful the observation may be, and however reluctantly it may be made; yet it is but too obvious—it must occur to every body, upon a single moment’s reflection, viz: That though his Majesty may be one day a little better, and another day a little worse, yet while any *symptoms* remain, there will ever be *doubts*. The situation of King will admit of no *diminution*. Like Cæsar’s wife he should not be *suspected*.”

Idem, November 18.

In this day’s paper was printed the paragraph upon which the ministers instituted their prosecution. Hitherto the reader has not seen any paragraphs which will justify the application of the epithets, *wickedly, maliciously, &c.* to Mr. *Almon’s* conduct as Printer of the General Advertiser. Some of the paragraphs are indeed severe upon the underlings and other creatures belonging to the ministry, but with respect to the King and the Prince (and no other persons of the Royal Family are mentioned) there is an uniform strain of loyalty and affection.

Informations *ex officio* have always been held odious, and their legality is more than doubted. It has been disputed but not decided. All the books agree that the practice of filing them is a manifest violation of the rights of the subject. They are a relique of the Court of Star-Chamber, and ought to have been abolished with that Court, but the Commons in their precipitation to destroy the Court itself, overlooked this instrument of it—of which Mr. *Hamilton* in the trial of *J. P. Zenger* says (p. 49, edit. 1752, and p. 29, edit. 1765) “ In times past it was a crime to speak truth, and in that terrible Court of Star-Chamber many worthy and brave men suffered for so doing; and yet even in that Court, and in those bad times, a great and good man durst say, what I hope will not be taken amiss of me to say in this place, to wit, “ The practice of information for libels, is a sword in the hands of a wicked King, and an arrant coward, to cut down and destroy the innocent; the one cannot because of his high station, and the other dares not because of his want of courage, revenge himself in another manner.”

There have been more informations against libels in the reign of George the Third, than during the reign of any of his predecessors. From the accession in the year 1760, to the year 1790, the number of informations against Printers and Booksellers is incredible. The like number of informations against the Press in the same number of years is not to be found in the History of Great Britain. A subsequent age cannot offer the occurrences of the present reign in proof of constitutional integrity.

of the most eminent council were retained to support this prosecution. This was being exceedingly illiberal, and leaves us scarcely any room to doubt of the motives in which this prosecution originated. And Lord *Sydney* (who in Lord *Temple's* time was one of Mr. *Almon's* warmest friends,) wrote a letter to the Prince of Wales, to acquaint his Royal Highness of the active care he and his brother ministers were taking of the royal reputation, and that they had retained his Royal Highness's law servants, the Hon. Mr. *Erskine*, and Mr. *Pigott*. This was a most extraordinary communication, made at the very time his colleagues were meditating and forging the most barbarous fetters upon his Royal Highness, in their plan of a Regency Bill, which every candid person must allow reflected more dishonour upon the royal family than a thousand paltry paragraphs, which just live their day and are heard no more; and if by chance any of them are brought into remembrance, it is either *Malice* or *Folly*, which gives them that consequence.

Mr. *Almon* was exceedingly deceived in the steps of this prosecution by his attorney; who repeatedly assured him, that the trial would not come on. Whether it was sheer ignorance, or neglect, or any other cause, is not now worth ascertaining. It is certain, that when the trial came on, it was discovered that even the ordinary attention had not been paid. However as a spirited defence was deprecated, very little was said; and the naked fact of selling the paper at the Printer's house, was all the evidence upon which the jury formed their verdict; which was for the crown.

Had Mr. *Almon* put his cause into other hands, and thereby not been lulled into a fatal security that the trial would be put off, and consequently had prepared that kind of defence, which the case was capable of admitting, there can hardly be a doubt, but that an impartial jury would have acquitted him.

After

After the trial it was immediately recommended to him to present a petition to the PRINCE of WALES. In obedience to this advice he presented to his Royal Highness the following :

To his Royal Highness the PRINCE of WALES, the humble Petition of *John Almon*, Printer of the General Advertiser, London,

Sheweth,

That he is under the deepest affliction on having unfortunately incurred the displeasure of the royal family, occasioned by a circumstance, totally unknown to him at the time it happened, owing to the dispatch and quickness of execution necessary in printing a daily newspaper. A very short, but offensive paragraph, stole in, unobserved, in the month of November last ; which has brought upon the Printer a severe and expensive prosecution by the officers of the crown, and which he fears is intended to terminate in his ruin. He begs permission to assure your Royal Highness, that no offence could be farther from his mind than one of this sort. The principles upon which the paper has been conducted, with loyalty to the King, and a just and warm approbation of the conduct of your Royal Highness, and of those great persons who are honoured by your Royal Highness's friendship, strongly distinguish, that such a paragraph was inimical to the line of argument, pursued in the General Advertiser. Your Petitioner humbly implores the benignity of your Royal Highness to lay his distressed situation before the King, of whose clemency there are so many instances, humbly hoping, that when his Majesty knows this offence was purely accidental, that the mind of the Printer never went with the crime, his ardent entreaties and the hardship of his case, will induce his Majesty in his wonted goodness to add to the many instances of mercy which
so

so splendidly adorn his reign, the *pardon* of your Royal Highness's humble Petitioner,

And he will ever pray, &c.

His Royal Highness received this petition with that benignity which is inseparable from his nature.

The offence was involuntary, and every friend to the Royal Family must say, that it was preferable to let the subject decline into obscurity, than to give it remembrance and consequence by a severe and undeserved chastisement. His Royal Highness's conception of the case was clear and just. He commanded Lord *Southampton* to write to the Lord Chancellor, to solicit his lordship to put a stop to any farther proceedings. And Mr. *Almon* had the satisfaction to read Lord *Southampton*'s letter, and to carry it to the Lord Chancellor. The application was unsuccessful.

The *Confidential Junto* had now full scope for their vengeance; and that they were determined to gratify all their former resentment, Mr. *Almon* had information in streams from all quarters; for they were so elated by the success of their manœuvre in having ensnared him, that they made the expected punishment the subject of their conversations at table, at the Opera, at Ranelagh, and other places. Some days after the trial, Mr. *Almon* happened to meet in the street (between Clare Market and Lincoln's Inn) one of the principal law officers of the crown, who, in the course of the conversation that passed between them, assured Mr. *Almon*, that he should press for the severest punishment, and in particular, for the pillory.*

It is scarcely probable, that the plan was so far laid, and not extended a little further. Those who

* The French poet, Corneille, says neatly,

"C'est le crime qui fait la honte, et non l'échafaut."

were in the habit of hiring mobs to disturb the Westminster election, would feel neither remorse nor difficulty in bringing a mob against an individual, who had upon that occasion in particular printed so boldly against them. His political sins were too many to be forgiven; and the Junto too much embittered, not to embrace the first opportunity for revenge. He had repeated information of the design.

In this situation he was obliged to dispose of his paper, and printing materials, with all possible expedition. Unfortunately for him, the person who contracted for them, and who got possession, proved insolvent, and he did not receive for his property, which had cost him several thousand pounds, an eighth part of the value.

Under the advice of many of his friends, and even of some of the learned gentlemen, who had been retained against him, he went to France; and there, as Mr. *Wilkes* says, (at the end of his letter in the note at the foot of page 35) "met with that protection, which an innocent man had a right to expect, but could not find in his own country."

The treatment Mr. *Almon* has met with, will no doubt operate as a warning to other Printers and Booksellers, not to risk their persons and fortune, in opposing any minister whatever. Thus far the court may be said to have gained their point. He is banished, and despoiled of his property. The press must therefore be silent, that the people may be kept in ignorance: for as to the *pretence* of defending the royal family, it is an insult upon common sense. Who has not seen, in the ministerial prints, the most abusive paragraphs every day, against particular branches of the royal family? Who was more traduced by ministerial writers than WILLIAM DUKE OF CUMBERLAND? and who more, by the same, and their successors, in the same way, than the present PRINCE OF WALES—because he
attaches

attaches himself to those families and those principles, which placed his family upon the British throne? Let any person take a cursory view of the ministerial prints during the present reign, and he will see, that they have teemed with the most scandalous invectives against those branches of the royal family, who have refused to yield obedience to an unprincipled and irresponsible Junto.

The selection of a paltry paragraph, written, as it seems, for the purpose of prosecution, and prosecuting him *only* for it; amounts to almost a demonstration by circumstances, that it was the *man* and not the *crime*, that was the object.*

These prosecutions for libels most commonly, if not always, originate in the resentments of party. They are not commenced for the satisfaction of justice, but for the gratification of revenge. When the delinquents, who are generally the Printers, come to be tried, the juries are told they are judges of only the *fact* of printing or publishing; that whether the matter complained of be a libel or not, is a question of *law*; and all the epithets, which in other cases constitute the crime, such as *intentionally*, *maliciously*, *wickedly*, &c. are in this case inferences of law; with which they are to have no concern, and upon all which they are incompetent to decide.

* A few years ago a rascally attorney sent to the different newspapers an advertisement of a watch being lost; and offered a reward for the recovery, in certain words which had been proscribed by an old act of parliament. He then brought actions against the printers for the penalty; and thereby levied a considerable booty; as they were all glad to compound the matter rather than go into a court of law; where their conduct seldom meets with a favourable construction.

The printer of a newspaper cannot everlastingly stand at the side of his press. His health and constitution would in a few years be destroyed by it. He therefore must at intervals trust to servants—Designing men watch these opportunities.

Any

Any man of the most ordinary understanding, must perceive, that this question of law, is already decided, by bringing the man to trial. It would be absurd, and reflect infinite disgrace upon our boasted laws, to say that he was brought to trial for *innocently* committing an innocent act. The criminality has been determined: and the jury are called only to decide the identity. This is called Law. And a man is sentenced to endure a long imprisonment, and to pay a heavy fine, and perhaps to the ignominy of the pillory, for having printed some silly paragraph, which no man would have remembered next day. And the Printer is also sometimes put under an interdiction of the exercise of his trade, by being further sentenced to find sureties for his good behaviour, in a sum perhaps exceeding the value of his property. And if he complains, he is told there is no hardship in the case; for he is to take care to print *only what is lawful*, and then his sureties will not be forfeited. But how is he to distinguish what is lawful, from what is unlawful? A special jury of gentlemen are told, that they are not competent to decide upon any paper, whether it is a libel or not, that being a question of law; yet the culprit, who is commonly a man of inferior rank, as well as education, must, at his peril, be competent to understand what a special jury cannot. And this is called Law.

This law of libel changes like the seasons of the year. The North Briton was a horrid libel during one administration, and a very constitutional paper during the time of another. The writer of the Letter to the People of England, was punished by one administration, and rewarded with a pension by another. *Junius's* Letter was a libel in Westminster Hall—it was no libel in the city of London. Innocent men are exposed to ruin, and often are ruined, and their families beggared, by being charged with the publication of a libel, which would have been no libel in

in the time of a prior administration ; nor, perhaps in a succeeding one.

What shall we say to a judge, who will permit such trials to come on before him ? Ought he not to call upon the prosecutor to produce the statute upon which he prosecutes ?—and if he cannot produce it, shall either the dictum of the bench, or the opinion of the prosecutor, supply the defect ?—This matter wants regulation. Every other tradesmen knows the laws of his profession, and when he transgresses : but the Printer has no guide : it is the *whim* of the day which either permits him to stay in his house, or sends him to prison.

The argument upon this constitutional and interesting subject, will admit of being extended to a great length ; but if it was pursued here, the reader might suspect it was done with a particular view to Mr. *Almon's* case. However as the following tract, which was written some years ago, by a person of distinguished eminence and virtue, and is become very scarce, can fall under no such suspicion, it is hoped the reader will accept of it as a proper *succedaneum*.

A few prefatory words may perhaps be necessary, to explain the cause of its being written.

When Dr. *Hayter*, Lord *Harcourt*, and others, in the year 1752, found it necessary to resign their situations under the Prince of Wales, now *George III.* on account of the encreasing influence of a dangerous Cabal, which was secretly headed by Lord *Bute*, and confidentially patronized by the Princess of Wales, the nation was alarmed at these extraordinary resignations, and more so when the causes of them were known. The affair was brought before the Privy Council, and there enquired into ; when it appeared, that certain improper books had been put into the hands of the Prince, and that some of the Cabal were

were more than suspected of being firm Jacobites. These facts occasioned the characters of the Cabal to be a good deal scrutinized in the public prints. The emissaries of the Cabal complained loudly of this abuse of the press; and the Duke of Newcastle, who was a timid man, permitted the Attorney General, *Ryder*, who was a ready instrument, and the Solicitor General, *Murray*, who was one of the Cabal, to prosecute the printers and publishers of these personal slanders, as they were called. Upon this occasion it was that Dr. *Hayter* wrote the following Essay.

AN ESSAY on the LIBERTY of the PRESS. Chiefly as it respects PERSONAL SLANDER. By Dr. HAYTER, sometime Lord Bishop of NORWICH, and afterwards Lord Bishop of LONDON.

“THE Liberty of the Press having of late been the subject of much conversation, and many crude things having been delivered out in defence, as well as in derogation, of that valuable branch of Liberty, it becomes the duty of every friend to the public to consider seriously,

“I. How far the Liberty of the Press is connected with the Liberty of the subject?

“II. Whether the complaints of the abuse of the Press be well grounded? And,

“III. Whether the peace and security, which any individuals may derive, from a new restraint of the Press, will compensate for the mischiefs which may arise from such restraint?

“The subject indeed is much more copious; but the design of this Essay is not so much to enter minutely into the subject, as to direct the attention of the public to such parts of it, as are most interesting, and better discussed by cool reasoning, than by popular clamour.

I. Liberty

" I. Liberty in general is a freedom from all but natural restraints. This being inconsistent with society, it is improved into a more limited Liberty, the Liberty of the subject, which may be defined a freedom from all but legal restraints. The perfection of social Liberty is the power of asserting, by representatives, those natural rights, which were reserved in the original compact, which established Society, and this is *British* Liberty.

" The Art of Printing was derived, though late, from the use of letters, and the invention of letters was originally founded in the use of speech. Man being intended for society, was created communicative. The gift of speech, for some time, gave vent to this natural disposition, 'till by the increase of men the faculty became too confined for the purposes of social life.

" Signs were invented for a distant intercourse. In the times of simplicity, these signs were the bare images of things. This proved a tedious method of writing, or corresponding. Many things were not expressible. Action and passion wanted their signs, which infinitely perplexed the communicative turn of lovers, scholars, and politicians.

" Necessity soon improved the invention. Letters became the signs of words, thoughts and things; and though in many cases they have since degenerated, and are applied to signify nothing but words, yet it was manifestly the design of the original inventor, that, by general consent, letters should express words, thoughts and things.

" For many ages they were applied to one or all of these uses, and thousands of amanuenses maintained themselves more reputably, than thousands of authors have done in modern times.

" At length, a variety of events having opened a communication

munication between the several known parts of the globe, writing became too slow a vehicle for the benevolence of mankind, much about the time when arrows and swords were not expeditious enough for their fury.

“ Both dispositions were gratified by accidents, and types and gunpowder were received in all civilized countries, as tending to the ornament and defence of civil communities’.

“ Learning soon flourished; superstition and dulness were disgraced; Liberty was the offspring of learning and truth; and by the quick circulation and collision of the products of different minds, men were animated and enlightened. They studied their rights, and in some few countries asserted and enjoyed them.

“ But the same kind of men, who were cramped in their genius for destruction, ’till gunpowder facilitated the work, availed themselves likewise of the noble inestimable Art of Printing, by converting the Press into a new missive weapon. The mischief was felt and lamented, but has not, in any Christian state, been totally suppressed.

“ The apparent reasons for this toleration of so great an evil, in the most arbitrary countries, are, 1. The benefits of the press, which outweigh the mischiefs of it; and, 2. The extreme difficulty of totally depriving men of a Liberty, derived from the natural right and faculty of speech. Thus the Liberty of the Press is connected with natural Liberty.

“ Liberty of the subject being now generally admitted to be founded in the reservations made in that compact, which originally cemented society, supposeth the use of speech.

“ The men who first gave up their natural rights for the benefits of society, must have stickled hard for the faculty,

culty, which promoted and facilitated the conjunction; and certainly, they never entered into a compact, that if at any time the gift of speech should be grossly abused by any number of men, a whole nation would submit to be deprived of the use of it.

“ Whatever they cannot be supposed to have given up remains a natural right, and is a part of those rights which constitute the Liberty of the subject.

“ *British* Liberty consists in the power of asserting, by representatives, those natural rights which were reserved as the Liberty of the subject, at the first institution of society. It would be an act of sedition, as well as an absurdity, to insinuate that this power is ever likely to be perverted, to the destruction of any natural right thus reserved: so close is the alliance between the Liberty of the Press and the Liberty of a *British* subject.

“ We may judge, from this view of the case, how greatly those learned men are mistaken, who deny the constitutional existence of the Liberty of the Press, because the Press is not coeval with *Magna Charta*. The use and Liberty of speech were antecedent to that great charter of *British* Liberties; and Printing is only a more extensive and improved kind of speech.

“ It may indeed be objected, that the tongue will admit of restraints, as well as the hands; and that, for the peace of society, such restraints must be supposed to have been originally submitted to.

“ This is undoubtedly true. It is the duty, and in the power of legislators, to restrain every impious, or immoral abuse of speech, tho’ it be not in their power absolutely to abolish the use of speech. The principal end of every legislature is the public good. This is the supreme law; for it is for the sake of the public that legislatures exist.

“ The

" The great offences which either the tongue, or the pen, or the Press may commit, and which fall more immediately under the cognizance of government, are blasphemy, perjury, and treason. These are offences against the whole community; therefore the punishment of them is the most unexceptionable act of power, and must have been consented to by every man, that ever enjoyed the benefit of society. It is the punishment of licentiousness, not of Liberty; and Liberty was never yet affected by any due punishment inflicted upon the licentious.

" Personal slander is a subordinate evil. When it concerns a member of the legislature, his character is fortified by privileges, which, as they are established for the honour of the legislature, have a respect to the good of the whole. In other cases, personal slander affects only one member of the community.

" It is the wisdom of our laws in particular, to remind the party aggrieved, that his injury is only personal; for the law confines the reparation to the damage he has sustained. This damage may be magnified by his public character, but it is only magnified to himself; for the reparation is made to himself, not to the public.

" When personal slander ripens into a judicial accusation, it then, and not till then, becomes a public concern; and the prevaricator, or the false accuser, becomes a debtor to the public.

" Men who do not rightly distinguish this, may, from a vain opinion of their public importance, assume the place of the public, and excite the attention of a whole nation to a mere personal slander. But bodies of men are as acute in their judgments, as individuals. They will immediately see, that the slander is only personal, and, therefore, will either contemptuously forbear to examine it; or they will suspect it to be true,

true, when persons eminent in office, or in abilities, are weak enough to subject the merits of the slander to a solemn enquiry.

“ But personal slander is a vague term. Men who are tender of an infirm reputation, will apply it to general words and sentiments, which may prove hurtful to their characters in particular. In this view the Liberty of the Press would indeed be a public nuisance; and *Tacitus's* account of *Sejanus* would deserve to be suppressed, as a libel against some men.

“ We will do them the justice to limit their idea of personal slander, and suppose them to define it, any direct injurious charge upon themselves. If the charge be injurious, and merely personal, they have a right to personal redress.

“ But let us suppose a higher case, and one which it is hoped will never happen. Suppose a set of men* should insinuate themselves, into power, who are known to be enemies to the political constitution. Suppose them to manifest their principles in the course of their measures, whilst they deny them, at proper seasons, by the most solemn professions. Suppose the characters of these men, and the situation of the public to be such, that no friend to his country can act in concert with them, and preserve his integrity; will it be called personal slander, or will any honest man judge it criminal, to expose the political characters and views of such men? Will it be an abuse of the Liberty of the Press, to open the eyes of the public, or to rouse its lethargic friends? Will it not rather be considered, by all disinterested men, as the original use and intent of that Liberty?

“ The party aggravated may possibly find redress in law, because the law is general, and could not ex-

* The Cabal.

cept a particular case of this kind, without appearing to license more injurious slanders, but the Liberty of the Press cannot be affected by such a case, whilst the Liberty of the subject subsists. And if the person who undertakes this heroic task should suffer, by a legal prosecution, he will be considered by every patriot, as a martyr to the cause of his country.

“ But here another question arises, What are those principles which characterize an enemy to the political constitution? The answer is, Those which are inconsistent with the existence of that constitution. Among us, for instance, the principles which strike at the vitals of our glorious revolution, which were active in opposing the accession of the present royal family to the throne of these kingdoms, and which have been ever since uniformly maintained by some men in spite of all the experience they have had, that the interests of the Protestant establishment are inseparable from the true interests of this country.

“ Let such men continue to entertain their principles in private, for possibly the disease of their minds may be incurable. But let them not attempt to join together two things so inconsistent in nature, as their principles and the public service of their country. They might be good subjects, and perhaps tolerable statesmen, in *Russia* or in *Spain*; but in this land of Liberty they will, and must be turbulent, as magistrates, and destructive, as politicians.

“ Volumes might be quoted, to shew that this is not the singular opinion of the writer of these pages; but one quotation will suffice to establish by authority what is so well founded in reason. The Reverend Doctor *Squire*, in his *Essay on the Balance of Civil Power*, presents us with the following strong and true declaration.

“ We have the most rational grounds to rest assu-
L “ red,

" red, that our own essential Liberties, his majesty's
 " just prerogatives, and the ancient constitution of
 " the kingdom, will be preserved pure and inviolate,
 " whilst the administration of public affairs, under
 " the sovereign, continues to be entrusted in the hands
 " of the WHIGS: but whenever, thro' some fatal coin-
 " cidence of circumstances, either the TORIES or the
 " republicans shall get the superiority, and become
 " masters of the reins of government, then, indeed, it
 " will be time to look about us, to ring the alarm-
 " bell, to put ourselves upon our best guard, and
 " to watch every motion of the desperate enemy." So
 far Doctor Squire.

" Now the best method, in such a case, of ringing
 the alarm-bell, is to exercise the Liberty of the Press.
 The exercise of this Liberty, amidst all the persecuti-
 ons it laboured under, had the good effect of putting
 the nation upon their guard, in the reign of King
Charles II. It was by the exercise of the same Liberty,
 that every motion of the desperate enemy was pro-
 claimed and opposed, in the reign of King *James II.*
 It was by means of the truths conveyed by the Press,
 that the ministry of the four last years of Queen *Anne*
 became odious to the public, and that his late majesty
 escaped falling into the hands of the *desperate enemy*, of
 persons, who would have deprived that prince of the
 service of his most faithful friends, and, by degrees,
 have betrayed him and the constitution, to an enemy,
 more terrible to *Great-Britain* and *Ireland*, than sword
 or pestilence.

" The reader will observe, that the abuse of this in-
 estimable Liberty is not here defended. The *Alarm*
Bell, or the slander, if it must be so called, is directed
 to the desperate enemy, only,* when he intrudes into
 power. In his private life good men will not molest
 him, and Politicians need not. Let him enjoy the

* Lord Bute.

gloominess of his own mind; let him even partake in the sunshine of Liberty, and himself experience, how impartial and universal the influence of it is. But if ever he presumes to invade the constitution of his country, by arrogating power, then, indeed, it will be time to look about us, and to display the use and benefits of the Liberty of the Press, by applying it to the defence of the Liberty of the subject.

“ If he interprets this to be personal slander, let him take the redress which the law may give him; provided the ALARM-BELL be but rung, and the nation convinced of truths of the highest importance, which could not be divulged without affecting him personally.

“ It may be necessary to recapitulate, before the second enquiry is considered. The use of speech is a natural right, which must have been reserved, when men gave up their natural rights for the benefit of society. Printing is a more extensive and improved kind of speech: as such it cannot, without a violation of the natural rights so reserved, be subjected to any restraints, but such as are fitly laid upon speech. Blasphemy, perjury, treason and personal slander, are the principal offences which demand a restraint. The three first are offences against the whole community. The last, being only an offence against individuals, if the punishment of it be carried, beyond the damage sustained by the persons aggrieved, the Liberty of the Press may be violated in some instances, in which that Liberty is of the utmost consequence to the interests of the family on the throne, and to the Liberty of this country in general.

“ II. The second enquiry is, whether the complaints of the abuse of the Press be well grounded?

“ It is extremely material to consider this; for then we shall judge, whether the complaints be public or personal:

personal: And, if the laws in being are insufficient to remove them, how far any new law may be expected to reach. Whether only to blasphemy and treason, which may appear to be its proper objects; or to personal slander, which is not so easily restrained by any other methods, than those now subsisting, and which may appear to be a less mischievous, and a less prevailing offence.

“ The two writers chiefly complained of are two, who may be very fitly named together, without doing any injustice to either of them; the late Lord *Bolingbroke*, and the writer of the *London Evening Post*. It is not a little mortifying to an advocate for the Liberty of the Press, to confess the abuses of it, committed by both those writers.

“ The former indeed hid himself in the grave, before he ventured to infect the air of this country with the most pestilential of his writings.

“ However, his posthumous works have been published triumphantly; * and those, whom it concerns, have given a signal proof of their tenderness for Liberty, by not suppressing a book, written with a view to pull up the root of all human society; and by molesting none of the persons concerned in the publication, tho’ the evil tendency of the book was so well known, that it was loudly proclaimed, long before the expectation of Libertines was gratified.

“ It would be a still more undoubted proof of this tolerating spirit, if the reviser should appear to be in an office, and, in some degree, connected with the religion and morals of posterity.

* They were published by *Mallet*, who was sometime private secretary to *Frederick* prince of *Wales*, and afterwards to his son. He was patronized by Lord *Bute*, had a pension from government, and a sinecure place in the customs.

" The writer of the *London Evening Post* would scarce deserve a mention, if the complaints of him were not very general.

" Yet such is the lenity of our rulers, that till very lately, this malignant, though contemptible, writer has escaped animadversion. The friends to the royal family, and to the true interests of the public, have trembled to see the reigns of the two best princes, that ever bore the *British* sceptre, treated as national calamities, to read Jacobitism extolled as public spirit, and the principles of the WHIGS, the only CONSTITUTIONAL principles, stigmatized as the result of Atheism, the invention of profligates, and the miscreant spirit of traitors.

" He has likewise distinguished himself as a personal slanderer ; but surely this is not a matter of public complaint. If the person slandered be a member of the legislature, he knows his privileges : if he be a private man, the law is at hand to do him justice. If the slander against a private man be guarded by Innuendoes, his case may be hard ; but the case of innocent writers would be harder, if Innuendoes should be construed into defamation. They may be construed into treason and sedition, by the connection and manifest tendency of a book, though this is seldom done. But treason and sedition are outrages, which it is the interest of the public to check : personal slander is an offence, which it is only the concern of individuals to resent.

" Under the administration of bad men, personal slander would be the forest of all evils. The public might perhaps be indulged in the amusements of blasphemy and treason, provided the proper objects of personal reproach continued unmolested ; or the blasphemy and treason would be only resented at a time, when it might be expedient, to intimidate printers and publishers,

publishers, lest their insolence should rise to the cruelty of creating jealousies against particular men.

“ A simple by-stander might, in such a case, be forward enough to expostulate with those delicate characters, and foolishly tell them, “ Gentlemen, what have you to apprehend? If the slander you would obviate be false, of what use is your greatness, and how precarious will it prove, if in the least endangered by a false accusation? If it be true, is the fountain of intelligence to be shut up, because your peculiar danger is, that it may now and then send forth an affecting charge against you?”

“ The answer of those gentlemen would be a most inverted preposterous maxim, but very well suited to such a system of policy, as bad men may be supposed to adopt, that the good of the whole must give way to the peace and security of individuals.

“ This answer will become the subject of the third enquiry. Before it falls under consideration, it may not be impertinent to observe, how differently a licentious abuse of the Press may operate at different junctures.

“ In times when men of the best hearts, and of the soundest abilities, are called forth into the service of the public, men, who are resolute in promoting the public good, rather than their private emolument, personal slander will dwindle into the mere impotence of invective. It will become matter of amusement to characters so much superior to it, and the Liberty, of which it is an abuse, will be as sacred and inviolate in their hands, as if the Press was employed in transmitting their due praises to posterity.

“ In times, on the other hand, when narrow-minded men, born and educated to prejudices which they dare not avow, sneak into power and confidence, then personal

al slander will come to be considered as an important offence. The whole community will be called upon to avenge it; the Press will be intimidated; the constitution will be said to be wounded, the moment such men are only stung; and heavy penalties will be devised, and severe prosecutions threatened, against the violator of the public peace, that is, the writer, who presumes to lay down certain true premisses, and to draw from them just conclusions.

“ And why all this agitation, and threatening, and confusion of face, but because it is not indifferent to such men, nor indeed is it to the public, whether they are in or out of power. Their characters require shelter and support. They are not fortified by the *murus abeneus*. It demands more care and anxiety to support a tottering superstructure, upon a weak foundation, than a solid edifice, of which the several parts are well disposed and connected, of which the whole is uniform, and the foundation unshaken.

“ But comparisons are invidious. We will leave them, and enter upon the third enquiry,

“ III. Whether the peace and security, which individuals may derive from a new restraint of the Press, will compensate for the mischiefs, which may arise from such restraint?

“ In order to discuss this, it may be worth considering previously, what sort of peace and security such men may derive from a new restraint of the Press? This consideration will answer the inquiry, even without disputing their favourite principle, that they are as important to the public, as they wish to be thought.

“ Slander is remarkably keen and active. The obstructions it meets with in one channel, will only have the effect of producing a more copious eruption in another. Men who dare not print, will write; and tho’
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publishers, lest their insolence should rise to the cruelty of creating jealousies against particular men.

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their writings will not be circulated with the velocity of fugitive pieces from the Press, they will make a much deeper, and a more lasting impression.

“ Every hand, through which they pass, will transcribe them, for the pleasure of possessing, and the power of communicating, a secret. If they pass thro’ ingenious hands, they will have the chance of being improved and embellished. If the object of them be an unpopular character, every sentiment of the writer will acquire some additional force, from the prejudices of every reader.

“ Men will be more disposed to talk over what is so cautiously circulated, than things which become too familiar, by being in the hands of the multitude. In the course of such conversations, circumstances will arise, which will inflame the odium of the unpopular men. Their birth, education, connections, consanguinities, measures, personal foibles, and even their aspect, their visage, if at all unpromising, will confirm the dislike, and ripen it into clamour and execration.

“ Where then is the peace and security, which individuals can hope for from a new restraint of the Press? If it be urged, that the same may be alledged in the case of treason and blasphemy, the objector will find himself mistaken, when he considers that treason and blasphemy are not so securely handed about in manuscript. They may now and then stray into the hands of one, who might remember his obligation to detect, or to destroy them. But when the *measures*, or the *power*, of any individuals, are become alarming to the public, a whole nation must be struck dumb, or some things will be said, which may prove the use of speech to be as great a nuisance to some men, as the Liberty of the Press.

“ But let it be considered, at what expence this imaginary

ginary peace and security of individuals must be purchased.

“ First, At the expence of one of those natural rights, which were reserved at the institution of civil society, the right of communicating our thoughts, provided they be neither treasonable nor blasphemous. It is certain that all men do not understand their natural and social rights clearly enough to shew their foundation and use; but let any one, even the least of those rights be invaded, and the invasion will be immediately understood; whether it be from instinct, or from what we call common sense, or from the laudable pride of Liberty, he who has the least to hazard will become clamorous, as soon as he apprehends an encroachment, upon the least part of that little he has.

“ And shall a general clamour, which may be founded in good sense and a spirit of Liberty, be excited for the sake of any individual? True policy will answer in the negative, and our present governors will with one voice admit, that such a measure is not necessary; and that tho’ it should appear, by the eloquence of the complaining individuals, to be necessary, yet, on public accounts, it would not be expedient.

“ In the second place, this imaginary peace and security of individuals, must be purchased at the expence of learning, of improvements in science, and of discoveries in nature and religion. How immense a price this is, may be best judged by those, who know how to estimate learning and useful discoveries. It is too much to suppose, that any set of men, in a civilized country, can be such Barbarians, as to value their private peace at a higher rate, than any instrument of general knowledge. Perhaps it might not be exaggerating to affirm, that a thousand innocent errors were better divulged, than one important truth suppressed.

“ Indeed

“ Indeed no such men are here supposed: for no more is meant than to limit the complaints of the abuses of the Press to their proper objects. It is evident, that if they transgress those limits, they cease to be the complaints of public spirit, and degenerate into the unmanly peevishness of personal resentment.

“ Learning owes its flourishing state to the Press, and as any branch of learning may chance to be connected with some scheme of policy, the restraints of a license or imprimatur would cramp and fetter ingenious minds to such a degree, that they would compose themselves to rest, and leave learned and curious disquisitions for such puerilities in literature as cannot offend.

“ The consequence might be favourable enough to Tory principles, to passive-obedience and non-resistance; therefore the Grand Signor prohibits the use of the Press, and therefore the kings of *France* and *Spain*, and other arbitrary potentates, suffer nothing to be printed without permission. But in a country of Liberty, learning will soon be impatient of unnatural restraints, and retire to those climates, to which the restraint may be more natural.

“ The third article in the price of this imaginary purchase to individuals, is that for which our forefathers struggled, at the hazard, and sometimes at the expence, of their lives and fortunes, THE LIBERTY OF THIS COUNTRY.

“ Without the free use of the Press, any characters or designs, unfavourable to Liberty, cannot be publickly known, till it is too late to oppose them. Hence the greatest enemies to the Press are those characters, which are notorious for entertaining those designs.

“ Men

" Men of true public spirit, when advanced to power, will be friends to the birthrights of their countrymen; and, as such, will have nothing to fear from the Press. They will rather rejoice in it, as the channel by which speculative men may convey an *useful hint*, which it might appear presumptuous to offer in conversation.

" Whereas men, who are too diffident of their characters, to wait for an honourable call into the service of the public, will find a grievous obstacle in the liberties of their country. They will no sooner thrust themselves into the cabinet of a minister, than they will meditate schemes for soaring above him. In order thereto, they will set soberly about the overthrow of the commonwealth; and that true Liberty* may be the more effectually attacked, their counsel will be, to connive at licentiousness, till the outrages of it become unsufferable. Then it may be no difficulty to bring personal slander into the aggregate sum of offences, and by subjecting that to new penalties, the great end will be answered.

" * And who are the individuals, whose peace and security can demand this protection? Considering the importance of the sacrifice, they should be men of the first consequence, distinguished by their rank, by the services of their ancestors, by many conspicuous proofs of patriotism in themselves; unblemished in their own characters; in their whole lives; in their friendships and *alliances*; always beloved; never once *suspected*; solicited by the people, not obtruded upon them; and, in short, friends to Liberty by education, by temper, and by their connections. But such men as these need no protection; their own minds will protect them against slander, if the laws should not.

" * They must be men of different characters that

* * These paragraphs obviously relate to the cabal.

stand in need of more peace and security than the rest of their fellow-subjects, and have the presumption to seek for shelter, in a breach of the public liberty. Men, of no real consequence in themselves, neither distinguished by the services of their ancestors, nor by any extraordinary merit of their own; labouring under general suspicions, and these founded in every circumstance, that can possibly create, and firmly ground, a suspicion; disliked by men of all ranks, and of the highest understanding: invidiously advanced to power and confidence, in neglect of the meritorious hands and heads; and, in short, friends to the worst system of policy, as the best adapted to their own emolument. These are the men, who may feel the Liberty of the Press, and, as they will consider every thing in the narrow view of their own interest, may determine to overthrow that Liberty.

“ Hence the public, and those whom it concerns will judge, whether the imaginary peace and security of such men be worth a purchase at any price? Or, indeed, whether such men at all deserve the notice and regard of the public? Whether their power, if they had any, would not rather deserve to be considered, as a toleration, on the part of the public, than as an establishment? And, whether the Liberty of the Press ought to be in the least affected by any thing such men have suffered, or may suffer from it?

“ I am so sanguine for the honour of my country, as to doubt of the existence of such men, in places of power and trust. It is impossible that the friends to Liberty, who are still very numerous, could act in concert with them, or not oppose them, with all the zeal and circumspection of loyal patriots.

“ For power cannot be innocent in such hands. Where any motive prevails, distinct from the good of those, for whose sake the power is conferred, that motive will direct the power.

“ It

" It will introduce men of the worst characters, of the worst principles, of the lowest qualifications, into offices, in which the most important perquisite to them, is the power of doing hurt.

" And it will exclude men of the highest probity, and of the best understanding, from every branch of power, because power, in their hands, would be directed to public utility; and so not only become useless to, but would involuntarily be levelled at, the views and designs of those enemies to the public.

" The friends to Liberty would soon be sensible of this. They would look about them, and ring the ALARM-BELL, and put themselves upon their best guard, and watch every motion of the DESPERATE ENEMY.

" As a spirit of Liberty is naturally restless and jealous, even though the danger be not real, but magnified by the arts of faction and sedition, we cannot suppose the friends to Liberty to lie dormant, if principles of slavery were known to be creeping towards the root of it, and so far advanced, as to wither the leaves, and deprive the branches of their radical moisture.

" These must be the illusions of well-meaning men, who are dreaming for the good of their country; for as men of opposite principles and designs cannot agree in the same end, we cannot conceive them to co-operate with harmony. The friends to Liberty* cannot be themselves passive agents to their political enemies; and of all the instruments, by which the former may propose to carry on the service of the public, they cannot employ any so unfit, so fallacious, and so likely to frustrate their intention, as those who are here distinguished by their real character of ENEMIES to LIBERTY.†

" But I will not alarm the well-affected part of my

* The Whigs. † The Cabal,

country-

countrymen. It may, perhaps, be more *seasonable* to congratulate them, that there are friends to Liberty in high offices, for we may rest assured, that they at least will do justice to the master, whom they serve.

“ This, indeed, is not the only security of the public, for there are certain marks, by which the influence of bad, designing men may be discerned; and till those marks appear, there is no pretence for jealousy.

“ *When the public affairs are carried on by the advice of a private CABAL; when that Cabal consists of men, who are more popular among the disaffected, than the loyal part of the people; when the well-affected shrug their shoulders, and *whisper* the discontent, which prudence, or obligations, or decency, restrain them from avowing; when men of known unshaken zeal for the service of their king and country are discountenanced; when party distinctions are said to be abolished, whilst the worst principles, of the most dangerous party, are insidiously gaining ground, and the principles of Liberty, in which the revolution was founded, decrease in their value, by not being current; when men are advanced to high stations, who stand in need of vouchers for so indispensable, presupposed a qualification as their loyalty; and, in short, when considerations of decency, of policy, and even of public peace, are sacrificed to the narrow views, the party prejudices, and the unpopular support of the cabal; then a free people will make use of their eyes to see, of their tongues to speak, and of their hands to write; then the Liberty of the Press will be exercised upon its proper objects, for it will be legally and honourably employed, in the defence of the crown, and of the Liberty of the subject.”

* This paragraph obviously relates to the resignations of Lord Harcourt, Dr. Hayter, &c. accomplished by the machinations of Lord Bute and the Jacobites at Leicester house. And here one cannot help observing, that had the education of the prince been properly committed to the care of the friends of the constitution, it is more than probable, that the many losses, disgraces, misfortunes, and oppressions of his reign would not have happened.

A P P E N D I X.

N U M B E R I.

The TRIAL of JOHN ALMON, Bookseller, upon an Information, filed *ex officio*, by WILLIAM DE GREY, Esq. his Majesty's Attorney General; for selling the London Museum, a monthly Magazine, in which was printed an Address to the King, signed JUNIUS. Before the Right Hon. William Lord MANSFIELD, and a Special Jury of the County of Middlesex, in the Court of King's-Bench, Westminster-Hall, on Saturday, the 2d Day of June, 1770. Taken in Short Hand, by W. Blanchard.

Council for the King.

The Attorney-General *,

The Solicitor-General †,

Mr. Moreton

Mr. Wallace

Mr. Dunning

Mr. Walker.

Solicitors, Messrs. Nuttall
and Francis.

Council for the Defendant.

Mr. Serjeant Glynn

Mr. Davenport.

Solicitor, Mr. Martyn.

SPECIAL JURY.

Leonard Morfe, of Queen-Anne-street, Esq.

Herbert Mackworth, of Cavendish-square, Esq.

John Anderson, of Henrietta-str. Cavendish-sq. Esq.

John Gould, of Hart-street, Esq.

Josiah Holford, Southampton-row, Esq.

Christopher Lethieulier, of the same, Esq.

Robert Cary, of Hamptead, Esq.

Gerrard Howard, of the same, Esq.

Benjamin Booth, of Lincoln's-inn-fields, Esq.

George Kent, of Teddington, Esq.

Edward Lovibond, of Hampton, Esq.

John Stillwell, Corn-chandler. of Russel-street, Co-vent-garden, *Talesman*.

* Afterwards Lord *Walsingham*, and Chief Justice of the Common Pleas.

† Afterwards Lord *Thurlow*, and Lord Chancellor.

Mr.

Mr. Walker opened by reading the record. After him, Mr. Attorney-General proceeded as follows :

MAY it please your lordship, and you gentlemen of the jury.

I have thought it my duty to bring before you a publication of this libel, a publication which I believe would be permitted in no civilized country in the world, to pass unnoticed or unpunished. The laws of this country protect its inhabitants,—the character of every subject; the public peace requires it. In proportion as men's characters rise in the world, and are fixed with public government, the defamatory writings affecting their characters and conduct, tend still more to break the public peace, which is intimately connected with their conduct. But the great orders of the state, and the majesty of the throne, can never be the subject of detraction of libels, without injuring the public peace in the greatest degree, without breaking those bonds which tie men together, and exciting the subjects to sedition. The charge that is brought against the defendant with regard to this publication, contains two propositions: the one, that the publication concerns the king; his administration of government; of public affairs of the nation; the great officers employed in government; and the members of the House of Commons.—It likewise contains another proposition, *that the defendant published this writing.*—These are the two points, which it is necessary for those who support the information, to prove to your satisfaction, and that is all that is necessary for them to do. In this particular instance, there is perhaps less necessity to trouble you much, because the author of this paper has left very little to insinuation or suggestion: The mode and shape in which libels are written, don't in any instance vary the offence of figurative expression, which is as intelligible as a simple one.—Ironical expressions will describe and express the intention of the writer or speaker, as clear and as plain as direct ones. Whether they do so or not, where they are ironical or figurative, depends upon your consideration, from the circumstances of the case, and the evidence that is laid before

before you. If there are asterisks, initial letters, or terminations, they may throw no disguise on the meaning; if they do, they disappoint the intention of the writer; nor are courts of justice so precariously formed, to mistake the meaning of what all the rest of the world would understand; and to shut their eyes against that, which is plain to every body else. All that I have to do at present, will be to shew, that the expressions used in this paper, do concern the King; his administration of government; of the public affairs of the nation; the members of the House of Commons; and the public officers of state.—In order to shew this, it will be necessary to mention to you, some few of those passages, the *whole* of which you have heard already; and I think that it is impossible for any man to doubt a moment about the meaning of the writer, and the application of the expressions which he has used. That I may be sure I do not err, and put a stronger sense on the words than the writer himself has used, I will endeavour as far as I can, in the passages that are alluded to, to mention the very terms of the paper. Can any man doubt, what was the meaning of the writer of this paper, when he says, “I am speaking of the errors of his education, the pernicious lessons of his youth, the partiality of his understanding;” and which understanding in another place he says, “he has not in one moment of his life consulted; that he was never acquainted with the language of truth, till he heard it in the complaints of his people; that he had descended to take a share in the interest of particular persons, and in the fatal malignity of their passions: he calls upon him to hear with firmness his own passions and prejudices of personal resentment, with which he has directed his public conduct, and he openly charges him with a continual violation of the laws.”

I will not take up your time to prove to you the application of these expressions to the King, because I will not do your understandings the discredit to suppose you have a moment's doubt upon that.—When he

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speaks

speaks of the great assembly of the nation, he says they are people who consider their duty to the crown, being representatives of the people, as their first obligation, and he arraigns them of venality. When he speaks of the public affairs of the kingdom, he says, "that England was sold to France, and that the King at the same time was betrayed; that he was sacrificed to the passions and prejudices of others; that the ministers have reduced him to such a situation, that he can neither do wrong without ruin, nor right without affliction; the Irish are plundered and oppressed; the King has united with his servants against the Americans, whose affections are all united; the English are actually contending for their rights, and are parties against him in the quarrel."—These are some of those public affairs which he thus reveals, traduces, and misrepresents: and, as if this were not enough, he endeavours to set in opposition, to dis-unite, and to irritate and set against each other, the different dominions belonging to the crown—different denominations and descriptions of men in the same dominions, and different parts of the same professions in the same nation; he bids a part of the army *feel* and *resent* that they are perishing in garrisons, or pining in quarters, neglected and forgotten. If one should ask one's self, what could be the motive of this man, and to what purpose was all this? could he thus mean to apply these expressions to the public affairs of the kingdom—to the House of Commons—to the King's ministers—to the Sovereign himself? Why should he do it?—What the motive?—Who is he? produce him! perhaps we may guess!—but there is no country in the world, that does not at some times (and no country more likely in the world than a country of free liberty to) produce men who act from various motives; their motives are different to those who are to judge of their actions; their actions, are what are to decide on their conduct.—Whether the anonymous writer of this paper, and those, who by publishing support him, act from any desperate situation of their fortune—from any malignity of heart—from any perverseness

verseness of understanding—from a low and contemptible ambition of being dishonourably distinguished—whatever the meaning may be, that is not now material for your consideration.—It is sufficient that there may be such men in the world—the question now before you is, whether there is now such a man? the present question is *whether the man now complained of, has actually published this paper?* but if his views are to be considered, if he had thus, as he hoped, dis-united every part of his majesty's dominions, and left them abandoned and deserted: what follows, (if it was not from the impossibility of any man's conceiving the least foundation for what was said) should rather be suppressed than repeated:—Say to what all this tends! see how undisguisedly, how expressly, and in words he has presumed, after he has disunited and provoked the people, to provoke and irritate the Sovereign; he says, the circumstances to which you are reduced, admit of no compromise with the English nation; all qualifying measures will disgrace you more than open violence; supposing it possible that no fatal struggle should ensue, you determine at once to be unhappy; for an English King *bated or despised*, must be unhappy.” *This*, said of a man, *such* a man, that there is not one among us, whose heart would not glow to think, that he had such a son, or such a father!—“It is barely possible that a fatal struggle should ensue!” it is but a supposition! It is but a possibility! What is that fatal struggle but *sedition*, or a *civil war*? and if *that* does *not* happen, then *you*, a hated and despised King, must be unhappy;—“but if they should no longer confine their resentment to a submissive representation of wrongs; if, following the glorious example of their ancestors, they should no longer appeal to the creature of the constitution, but to that high being who gave them the rights of humanity, and whose gifts it were *sacrilege* to surrender:”—so, then the subject has sustained wrongs; their rights have been violated; it was glorious in our ancestors to stand against the crown, when they had received wrongs, and their

rights were violated! then, it is glorious not to appeal to the Sovereign, the creature of the constitution, but to that high being, who gave them the rights of humanity—here he closes it; “it is not merely treachery, it is not perfidy, it is not—but, it is *sacrilege*, to surrender those rights which have been thus injured;”—but, as if *this* would not do, he reminds him of the *Stuarts*, and bids him remember, that as the crown was *acquired by one revolution*, it may be *lost by another*.—And as if that was not enough, having said that the rights of the subject were violated, and their wrongs thus neglected, he concludes the whole, by declaring, that the *English* dare openly assert their rights, and in a just cause—a just cause is, where they are sustaining public wrongs, and their rights violated, then the *English* are to meet, and are ready to meet.

This is the language of this paper, this is the style of this desperate man—the defendant is charged with publishing it—What defence can be anticipated? What can we suggest to ourselves to be the ground upon which any defence can be made to this information? If it is said, that the defendant is not the *author*? is then the *author* only to be punished? Is a man who *writes criminal*, and he who *disseminates the poison, innocent*? What signifies all the writers in the world, if they are confined to their garrets? and can’t find publishers: they may write to eternity, and notwithstanding all their malignity they will do no damage. I am persuaded, that the man who introduces to the public the paper first written, is full as criminal as the writer. You will then affect the liberty of the press!—The liberty of the press is as sacred as the constitution itself, and is an essential part of it, so is my liberty to move, as I please, to say what I think, and to act as I think; but I must not employ my tongue, my hand, nor sword, to the prejudice of another man; nor must you use your *trade* to the prejudice of another man; but he is not the *first* publisher perhaps! the *first* paper was published on the 19th of *December*—this was advertised a few days afterwards, and published and sold, I believe,

believe, on the first or second of *January*, 1770.—
This person published this paper. The fact will be
proved—It remains then for you *not to punish*, for that
is not the present subject, but to enquire whether the
defendant has committed this crime or not.

William Bibbins called, and examined by *Mr. Thurlow*,
the Solicitor-General.

Q. Do you know *Almon's* shop in *Piccadilly*?

A. I do; a bookseller's shop.

Q. Did you at any time buy any paper there or
not?

A. I did.

Q. What did you buy?

A. The *London Museum*. (*Produced in court*)

Q. Is that the *very* book you bought?

A. Yes; it is.

Q. What day did you buy it?

A. On the first of *January*.

Q. From *Mr. Serjeant Glynn*. Be so good as to let
us know who you are?

A. I am a messenger to the press.

(*The paper was here read.*)

Mr. Thurlow. I shall call a witness, in order to
shew, that *Almon* was one of the original publishers;
or, one of the persons to whom the attention of the
public was called in that character.

Mr. Serjeant Glynn to *Bibbins*. You are a messenger
to the press, please to tell us what that office is?

A. It is my business to buy all political pamphlets?

Q. Have you a salary for that purpose?

A. There is a salary annexed to that office.

Q. Then without any direction whatever, when
a political pamphlet comes out, you are to buy it?

A. Yes.

Q. You looked upon this as a political pamphlet?

A. Yes: I did.

Q. Did you buy all the *Museums* that were pub-
lished, or only this?

A. I bought

A. I bought them of the publisher mentioned in the advertisement: I have a standing order; and never wait for direction.

Q. Do you buy all magazines and papers which come out?

A. If any thing *particular* is advertised to be published in them, *then* I buy them.

Q. I believe *Junius* was advertised in *all* the magazines: Did you buy *all* the magazines?

A. I bought *all* that I knew were published by him*.

Q. I would be glad to have it understood, whether what you do, is done from the idea you have of the duty of your office, or whether you are so directed?

A. From the idea of the duty of my office.

Q. Have you kept them ever since?

A. I delivered them to Mr. *Francis*—and he delivered them to me again.

Q. How did you know it again?

A. I marked it, and know it to be the same.

Q. You have a salary for your office?

A. I am only an acting messenger.

Q. Did you buy the *London Magazine*†?

A. I did not.

Q. Who did you buy it of?

A. The young man in the shop; I asked for the *London Museum*, and he delivered it to me.

Nathaniel Crowder, examined by Mr. Moreton.

* Informations were drawn against the defendant, for selling, on the first day of *January*, 1770, the *Freeholders Magazine*, and the *Town and Country Magazine*, each containing *Junius's* letter; which, probably, this evidence bought at his shop the same morning.—There is not a doubt, that some copies of almost every magazine, are sold at the shop of every bookseller in the kingdom; but is it reconcileable to any principle of justice, that a man should be prosecuted for *only selling* a book in the course of his trade, which has been printed and published with impunity by another, whose name is mentioned upon the title page?

† *Junius's* letter was in the *London Magazine*.

Q. Did

Q. Did you buy any *London Museum*, and when?
at the defendant's shop in *Piccadilly*?

A. I did: this is it—(*producing it.*)

Mr. *Davenport*. What are you?

A. I supply the gentlemen of the Treasury with all political daily publications.

Q. Then you are a sort of messenger, employed by the Treasury to select all the papers they direct you to get?

A. Yes.

Q. You don't know any thing of the bookfelling trade?

A. No; I do not.

Q. Who delivered that pamphlet to you at the shop?

A. A young man; I cannot tell who he was.

Q. What did you ask for?

A. I asked for the *London Museum*, and somebody gave me one.

Mr. *Serjeant Glynn*. May it please your lordship, and you gentlemen of the jury, to favour me in the present cause in behalf of Mr. *Almon*: and gentlemen, out of the concern that I have for my client, Mr. *Almon*, it gives me a peculiar satisfaction, that a cause of this nature, affecting him so greatly, comes to be tried by gentlemen of your character. Gentlemen, Mr. *Almon* is singled out for a prosecution, as the publisher of a paper, contained in a certain pamphlet that comes out monthly, and is called a *Museum*—for the publication of a paper, that hath singly appeared in all news papers that have been published. The original publisher well known, and avowing himself. I should have thought that Mr. *Almon*, upon the evidence of a man, who calls himself a messenger to the prefs (an office, that should have expired with that odious system of laws)—Upon the evidence of that man, finding this book upon a stall, or delivered to him by a boy in the shop, that Mr. *Almon* should now struggle against being convicted of an offence, which would

would bring upon him, undoubtedly, very severe punishment.—Gentlemen, it is (in my opinion) a question that goes very far beyond the person of Mr. *Almon*. If the prosecutor had thought proper to bring before you the *known* and *avowed* publisher of this paper, in *that* case, the question of the *guilt or innocence* of the paper, would have been material for your consideration. As Mr. *Almon* is *now* circumstanced, if the paper was *meritorious*, the *merit* could *not belong to him*. If, on the other hand, the paper is *criminal*, the *criminality* cannot be imputed *to him*. This offence has been described in the information, and represented afterwards by Mr. Attorney-General, in the opening: Mr. Attorney-General has said, that “it was published in the malevolence of the publisher’s heart, to vilify and asperse the King upon the throne; that it was done with an intention to excite sedition and destruction in the kingdom, to divide one part of his majesty’s subjects against the other; and pursuing that malevolent intention that prompted the author to excite disaffection to the King, has taken that odious and detestable part of exasperating the King against his subjects.”—To whomsoever *that imputation* belongs, it is certainly the greatest offence that a subject of this kingdom (be he whom he will) can possibly commit: Gentlemen, whether that belongs to Mr. *Almon*, or to the *writer*, I must submit to your consideration.—Whether it belongs to the author, is not now the subject for your discussion.—Gentlemen, I should be very unwilling, as I have stated it to you, to have it totally immaterial; as I am uninstructed by Mr. *Almon*, who knows nothing of this paper, either to defend it, or to submit to the criminality of it.—As I have no instructions on the subject, I will not trouble you with many observations: whenever the *real* publisher comes to be tried, the jury then concerned will consider and decide on the question. It has been said, that this is “to vilify, and asperse the King himself.”—The highest offence that the rancour of the most malevolent heart could ever conceive; but is it such? Is it

to vilify and asperse the King? Was it the opinion of the drawers of the information that it was so? I am of opinion that it could not be so; I am of opinion, from a single omission, that *that* was not the construction the drawer of the information put upon it. I have always been led to observe, that the word *false* has been inserted in these informations——every one of them.——How happened it to be omitted *here*? If this conveyed personal reflection on the King, would not the drawer of the information have been prompted, for the honour of the King, to say that it was *false*?—I do say it, that if there is a single word derogatory to the personal honour and virtues of his majesty, it is false in the *highest degree*.—I say, they should have said it was so.—They cannot now, with decency, contend that the King is personally reflected on, because they have not undertaken to falsify the matter of fact.—There is another observation that I would submit to you; and I don't mean to submit it to you as at all preventing your going into the construction of this paper.—It was only given me to contend, that the publisher of this paper is innocent: but I must take some hints of what has been said, and some doctrines that have been laid down. I take notice of it, because on future occasions it will concern *others*, and because (in my opinion) it concerns the *public*. I do agree, that personal imputations on the King, can never be defended; but, I do assert, that the freedom of political discussion is of the utmost consequence to all our liberty, and I do insist upon it, that the actions of this government may be canvassed, freely, and consistently with the duty of a good subject; and then ought always to be defended.——The King's hand must be employed to the act.—It is no imputation to the King, to censure the acts of government.——In no sense is the King to be censured, when the conduct of government is only animadverted on. It would be idle to state, that there is a constitutional check, on the power of the crown, lodged in those hands, where———say that is criminal, and give them information. Having entered lately my protest
against

against this doctrine, I shall not trouble you with any application of it to the present question. Let this imputation be what it will, Mr. *Almon* is not guilty of it: he is not the *publisher*.—Mr. *Almon* is a bookseller, lives I believe in *Piccadilly*, and you find the charge against him is, the having this book in his shop. I should really think, for the sake of the honour of the laws, for the safety of every man, that is by no means proper evidence to convict a man upon: I have always thought, that to the *essence* of a *crime* belongs *intention*. I could never conceive that any man could be guilty who was not *criminal in his heart*. I have always understood too, that whatever is necessary to constitute an offence, is incumbent on the prosecutor to prove.—Gentlemen, is there the least tittle of evidence before you to affect Mr. *Almon*? not only with a black malevolent intention, ascribed to him in the information, but with any intention at all?—from any mischief done, or to be done? a paper contained in a miscellaneous tract; found only at that shop.—Gentlemen, if Mr. *Almon* was to be convicted as an offender in the publication of this paper, I think we should be—what never will be allowed in this country I hope, and I believe what, in no civilized country ever was—that a man should be innocent in his intentions, and at the same time *guilty*. It seems to me to be the greatest paradox, the greatest solecism that ever was attempted to be proved.—Gentlemen, therefore in behalf of Mr. *Almon*, we now insist upon it, that though the fact is, that this book was found in his shop, yet that Mr. *Almon* is in no sense the publisher; nor criminal; he never had it, or if he had, his mind never went with it.—After having observed to you upon what has been produced to you in support of the prosecution, it would be almost unnecessary to open to you the particular circumstances of Mr. *Almon*'s case: but, gentlemen, we have not only that defect of evidence which we are to rely upon—we have not only to say that Mr. *Almon* has not been proved to be the intentional publisher of the paper (and this was absolutely

absolutely necessary to be proved before he could be convicted) but we have it negatively to prove that this came to Mr. *Almon's* shop without his knowledge, and that he sent it back as soon as he knew it! Is that circumstance sufficient to prove Mr. *Almon's* guilt? Trifling indeed!—we know that advertisers will insert whatever they think proper! and Mr. *Almon's* name appearing to that advertisement, it ought not to be the occasion of any inference drawn against Mr. *Almon*.—Gentlemen, you will be told, that among the trade, it is their constant custom to insert the names of such bookfellers as are most conveniently situated for the circulation of such books—and this was inserted without his authority, and the books returned unfold—the few that were sold, were without his knowledge or intention.—If these circumstances appear before you, how can you say that Mr. *Almon* is guilty of publishing this paper? If publication is an offence, Mr. *Almon* cannot be said to have committed it? Mr. *Almon* was entirely innocent, entirely ignorant of it—and, if this is to be the law of the land,—if a law so contrary to natural justice is to prevail, how is any situation of men—any age to be safe? The common excuse can never be admitted, because it is quite indifferent, if *intention* is *immaterial*—A man then is criminal in the highest degree, though, at the same time, he never knew what was doing.—I do most heartily subscribe to a doctrine laid down by the Attorney General, as I build upon its authority a doctrine, which, I think, is highly wholesome and beneficial to the subjects of this kingdom. He has said, that in all cases whatever, the liberty of the press is the most sacred of all others. He has truly said, that that principle rests on the same principle, and the same security, and to be governed by the same law, as every other article of our liberty. It is most certainly so. Mr. Attorney General has said, that the liberty of the press, is the liberty of writing what is just:—*I*, says he, have the liberty of *acting* and *doing*; but, if I abuse that liberty, I become *criminal*. Certainly so!

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no position can be clearer!—If there is an abuse of that liberty, undoubtedly it is the highest misdemeanor, in proportion to the value of the liberty he abuses; but apply that or any other liberty to the present case. I have the liberty of walking; (when I can, I have that liberty too) but supposing, that in the course of my walking, I abuse that by doing any mischief, then I abuse that liberty: or supposing, that in any other liberty that I have of acting, I act criminally, then I am punishable for it. Most certainly so!—Suppose I have the liberty of using my hands, if I use them to the assault, or to the annoyance of my neighbour, I am then criminal: *but under what circumstances?* If I do it *DESIGNEDLY*, then I am criminal; if *not*, I *cannot* be so; look into every liberty we enjoy, and you will find, that the exercise of it depends upon *this* principle, I will not abuse it. If a mischief arises to my neighbour, I am in some sense answerable in a civil act, but I can never be made a *criminal*, unless I am guilty of wilful abuse. Mr. Attorney General has put in the very case: a man has the liberty of using his hands; if he uses them to the mischief of his neighbour, he is a *criminal*; but if by *accident* he hurts his neighbour, he is not criminal, he hath not offended against the peace. What means the distinction? Why, in the latter case, he is not criminal, because he had no intention to do the act he did; and to constitute criminality, it is necessary there should be a *wicked intention*.—To apply this to the case of Mr. Almon. Supposing now, for argument sake, that you are convinced that this paper is *criminal*.—Mr. Almon has, in the course of trade, published it; that it has been published at his shop; now, it does not appear that he had the *least knowledge* of it; indeed we will produce proof to you of the *negative*, that he had not the least knowledge of it. Stating the case thus, the same rules that extend to a man's answering for every act of wrong, where *there is an intention*, certainly the same rules must acquit, where there is *no wicked intention*. Gentlemen, I will therefore submit to you, upon all
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the circumstances of this case, that we are entitled to your verdict for Mr. *Almon*; that his conduct cannot be condemned, without violating one of the first principles of natural justice; and I do hope, that if I should be so unfortunate as to have that ever admitted to be violated, I hope it will be violated for some greater purpose, than merely to effect the ruin of a bookseller, who, in this part of his conduct, is not criminally guilty; and whom, in this case, gentlemen, I must submit to you, as *an honest* and *an innocent* man.

Mr. *Davenport*. We will call a witness to prove, that Mr. *Almon* is the mistaken object of this prosecution; that the books were sent to his house without his knowledge.

(Call John Miller.)

John Miller sworn.

Serjeant *Glynn*. I am not bound to prove the contrary of what they *have not proved*.

Lord *Mansfield*. Use your own judgment.

Mr. *Davenport*. I apprehend, in a cause of this sort, we need call no witnesses at all. I shall be very short upon it. This charge is a malicious and wilful publication of this libel, that has been read to you from the *paper itself*, and from the *record*. You will try whether that evidence satisfies you, that Mr. *Almon* is the *real* or the *mistaken* object of this prosecution? The parties who prove the *supposed* publication, prove the going into Mr. *Almon's* shop, in *Piccadilly*, and buying there a pamphlet that they asked for, under the title of the *London or British Museum*. *That is the evidence*. There is no letter produced to you; there is no specification of that sort of libel, that is contained upon the face of the record. The book, the pamphlet was sold there without the others knowledge of the contents of it. It is usual, and I believe many of you know it, for booksellers, in different parts of the town, to send pamphlets and books published for themselves to other booksellers; and this appears to be by one *John Miller*, who stands forth, not only as the printer, but the actual publisher of it. If that be the case, and, if
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it were possible, that this might be published for some other man who avows the publication, it might be sent very honestly to Mr. *Almon's*, or any other shop in this town, and they would be equally the objects of this prosecution; if consent, if concurrence does not go with the crime, of that you are to be the Judges; of *that*, no evidence has been given; nor is it possible to stamp a crime of so enormous a nature, as has been described by the Attorney-General, on a man, who himself has had no communication with the publisher. I advised my client to call no witnesses, and I do submit to you, that he is very clear of this charge: if they mean to try it again, they will get better evidence of his guilt.

LORD MANSFIELD *to the Jury.*

There are two grounds in this trial for your consideration. The first is matter of fact, whether *he did publish it*. The second is, whether the construction put upon the paper by the information in those words where there are dashes, and not words at length, is the *true* construction; *that is*, whether the application is to be made to the *King*, to the *administration of his government*, to his *ministers*, to the Members of the House of *Commons*, to England, Scotland, America, Ireland, as put upon it by the information; because, after your verdict, the sense so put upon it will be taken to be the *true* sense; therefore, if you are of opinion, that this is materially the *wrong* sense, it will be a reason for *not* convicting him upon *that sense*.

In the first place, as to the *publication*, there is nothing more certain, more clear, nor more established, than that the publication—a sale at a man's shop—and a sale *therein*, by his servant, is evidence, and not contradicted, and explained, is evidence to convict the *master of publication*; because, whatever any man does by *another*, he does it *himself*. He is to take care of what he publishes; and, if what he publishes is *unlawful*,* it is at his peril. If an author is at liberty
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* What is unlawful?—The only statutes against libels, viz. 3d Edw. I. 2d and 12th Ric. II. condemn or punish no other than *false news*.
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to write, he writes at his *peril*, if he writes or publishes that which is contrary to law; and, with the intention or view, with which a man *writes* or *publishes*, that is in his own breast. It is impossible for any man to know what the views are, but from the *act itself*; if the act itself is such, as infers, in point of law, a *bad view*, then the act itself proves the thing. And as to the terms *malicious*, *seditious*, and a great many other words that are drawn in these informations, they are all inferences of law, arising out of the fact, in case it be *illegal*. If it is a *legal* writing,* and a man has published it, *notwithstanding these epithets*, he is guilty in no shape at all. And Mr. Serjeant Glynn told you what was true in libels *formerly*: they had more epithets of that kind, and, among the rest, they put in the word *false*; but he is mistaken as to the time; it was left out many years ago; and the meaning of leaving this out is, that it is totally *immaterial* in point of proof, *true* or *false*: if it is *true*, there is, by the constitution, a legal method of prosecution, from the highest to the lowest—every man for his offences. It has been left out, and many others of the same nature, a great many years ago, in prosecutions of *this* kind:† but as to the two facts now before you.

They say, “That whoever shall be so hardy to tell, or publish any *false* news or tales, whereby discord or slander may grow between the King and his people, or the great men of the realm, shall be taken and kept in prison, until he has brought him into court, which was the first author of the tale.”

* How is any man to know *what is a legal writing*?

† How many years ago?—It was left out in the information against Mr. *Wilkes*, because all the Crown lawyers knew very well, that every word of that North-Briton was *TRUE*. But does Lord *Mansfield* mean, that it has been left out ever since he knew the court of King's-Bench? He certainly does not, for he knows better. He cannot have forgot (being Solicitor-General at that time), that in the information against W. Owen, tried the 6th of July 1752, for publishing the case of Alexander Murray, Esq. the words are, A wicked, *false*, scandalous, seditious, and malicious libel. Therefore it is not a *great* many years ago, since the word *false* was left out. But it seems to be omitted now, in conformity with, and perhaps the better to enforce that *new* and *absurd* doctrine, that any writing, *true* or *false* *against* a minister, is a libel. It may be so, according to the imperial slavish civil law; but it is contradicted

you. As to the publication, here are two witnesses that swear to the fact: *Bibbins* swears, that being led by an advertisement, that such a pamphlet was published and sold at the defendant's, in *Piccadilly*, that he went there, asked for it publicly; it was publicly exposed to sale, and sold to him by a lad in the shop, that acted as a servant at the defendant's. There is another witness, *Crowder*, who likewise swears, that he asked publicly for one, and that was sold him by the defendant's man: *thus it stands upon their evidence*. If there had been an artifice or trick, of sending a man privately into another man's shop, to sell it, in order to trap him, if he has such a thing; that is to be proved by the defendant. In this case, the defendant may call a servant of his to give evidence; but they have judged it wiser and pruder not to call him; therefore it rests entirely upon this suggestion.

Glynn. We did not call the servant, we called Mr. *Miller*, the publisher.

Mansfield. It certainly rests singly upon the evidence of the two witnesses, with regard to the publication of this paper: if you believe these two witnesses, you will be satisfied as to the fact: if you believe that what they have sworn is false, and not true, you will *not be satisfied*.

As to the sense put on the words by the information, you will exercise your own judgment: but this certainly, in point of law, is against the defendant; and, if you are also satisfied with the sense put on the words

contradicted by natural reason, upon which is founded the mild and liberal law of England. Indeed, Lord *Mansfield's* definition of the liberty of the press, warrants us in this supposition, for, upon Mr. *Woodfall's* trial, he said, "The liberty of the press consists in no more than this, a liberty to print now without a licence, what formerly could be printed only with one."—And, in the information against *Richard Nutt*, for printing and publishing the *London Evening Post*, of Sept. 10, 1754, the paper is called a *false*, wicked, scandalous, seditious, and malicious libel. This information was filed by Lord *Mansfield* himself when he was Attorney General. And, in the information against Dr. *Shebeare*, tried by Lord *Mansfield*, in *Trinity term* 1758, for publishing the *Sixth Letter to the People of England*, that letter is called a *false*, wicked, scandalous, &c. libel.

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by the information, you will find the defendant *guilty*. They severally prove their being bought there; but if you believe they were not bought there, or should not agree with the information, with regard to the sense there put on the words, in these parts of the paper; in *either* of these circumstances, you will *acquit* the defendant; and therefore, in order to guide your judgment the better, you will take the paper and the information with you.

The trial was finished about twelve o'clock. The jury then went out, and staid out near two hours and an half. When they returned into Court, *Herbert Mackworth*, Esq. (one of the jury) said to Lord *Mansfield*,

My Lord, I am instructed to ask a question;

Whether selling in the shop by a servant, of a pamphlet, without the knowledge, privity, or concurrence of the master in the sale, or even without a knowledge of the contents of the libel or pamphlet so sold, be sufficient evidence to convict the master?

To which Lord *Mansfield* answered,

I have always understood, and take it to be clearly settled, that evidence of a public sale, or public exposure to sale, in the shop, by the servant, or any body in the house or shop, is sufficient evidence to convict the master of the house or shop, though there was no privity or concurrence in him, unless he proves the contrary, or that there was some trick or collusion.

The jury then agreed among themselves; but before the verdict was given, Lord *Mansfield* desired,

That the Attorney General and Mr. Serjeant *Glynn* to attend and take down his opinion; and here he repeated as above to the jury, except, that instead of saying it was sufficient evidence, he said it was *prima facie* evidence to charge him, unless he could shew it was by trick or collusion, and without his knowledge or privity; and then added, "If I am wrong, they may move the Court, and the trial will be set aside."

The jury being now agreed, the foreman, Leonard Morse, Esq. said GUILTY.

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Previous

Previous to the beginning of the succeeding term, the defendant having had a consultation with his council, was advised to move for a new trial; which was accordingly done on the 27th of *June*, upon the ground of law, That the master is not answerable, in a criminal case, for the conduct of his servant, where his privity is not proved. But the Court did not think proper to grant a new trial.

On the 28th of *November*, 1770, the defendant was brought up for judgment, when his council produced affidavits of the several facts mentioned in Mr. Serjeant *Glynn's* speech upon the trial. However, the judgment of the Court was, to pay ten marks (*i. e.* 6l. 13s. 4d.) to the King, and to give security for his good behaviour, for two years, in EIGHT HUNDRED POUNDS; himself in four hundred, and two sureties in two hundred pounds each.

The real printers and publishers being tried at *Guildhall*, each by a jury of independent citizens of London were all acquitted.

The law proceedings attending this trial, cost the defendant *one hundred and forty pounds*; exclusive of a great number of incidental expences, amounting to a considerable sum.

N U M B E R II.

(Never before printed.)

ARGUMENTS in the Court of King's-Bench, taken in Court, in Short Hand, by W. BLANCHARD; on the Motion for a new Trial, in the Cause of the KING and ALMON; before the Right Hon. Lord Chief Justice MANSFIELD, Mr. Justice ASTON, Justice WILLES, and Justice ASHURST, on *Wednesday, June 27, 1770.*

Lord Mansfield. **T**HE case of the *King* and *Almon* was an information for publishing a seditious libel, signed *Junius*.

In order to prove the defendant guilty of the charge, they called *William Gibbs*, who said he bought the paper or pamphlet, (I believe it is in the shape of a pamphlet) produced to him at the defendant's shop in Piccadilly, on the first of January, and he bought all that he knew were to be sold, at the several places where this letter signed *Junius* was published. He says he is employed by an officer, that he called the messenger of the press, as a deputy (I think he said) to him. And of his own head he goes to buy up political pamphlets that he thinks proper, or hears of being published, at the several places where they are to be sold. And, upon his cross examination, thinking it a point as having particular directions to buy at this place, and not to buy at others; he says, what carried him to this place was two advertisements he had seen of printing these papers, signed *Junius*, advertising them as published and sold for *Almon*; he says he went by the directions of that advertisement, and he bought it of a young man in the shop.

Upon this evidence, without objection, the paper signed *Junius* was read; after reading that paper, to corroborate with the first witness examined, they called *Daniel Crowder*; he produced another pamphlet in which the letter was; he says he bought that at the defendant's shop. It seems he is a man that buys newspapers and pamphlets like these for the Treasury, he is employed by them; upon this evidence the Council for the Crown, and the Attorney General rested the cause.

The defendant's council, my brother *Glynn*, in that cause, said, he would not go immediately in this Court to justify this paper, or enter into the merits of it. But whenever there came to be a prosecution against the writer, or the original publisher, that might be a question he did not go into now, but he insisted that *Almon* was innocent; if they came to his shop, it was without his knowledge; and he sent it back again as soon as he knew of it; besides there was no proof at all for affecting him with the knowledge of the contents, or any of the epithets in the information. Upon that, they called a witness to prove that it was sent to his shop without his knowledge; and he sent it back immediately, as soon as he came to the knowledge of what it contained; that it was opened to the evidence; he was called; *John Miller* was the witness; *Mr. Davenport* then urged, and pressed to ask him the question, but upon more consideration, *Mr. Serjeant Glynn*, however, was by, and consulting with him, there was some deliberation about it, and a kind of doubt, and there being something proved bad to hinder his being examined, and at last it ended without examining him, which they thought the most prudent way, and they would not ask him any questions at all; brother *Glynn* said, very judiciously, there is no need to ask him any questions, we will leave it upon the proof of the circumstances. When the paper was read, the observations were made, *it is printed for J. Almon*; which is in the paper itself. Upon this the cause was rested. I summed up to the jury in the

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way that I have always took the law and understood it to be, and in the way that I have summed up in every cause, public or private, since I sat here; that is this: that the question before them was, I say in the way I have always done, I have several times reported to the Court, and called upon the Court to set it right if I was wrong, and they have, upon several occasions, agreed with it as the law, and that was this: the question before them was, Whether the defendant was guilty of publishing the paper, charged by information; in order to find him guilty, they must be satisfied of two things; first, they must be satisfied that the applications made by the information, by way of allusion, or by way of filling up the blanks, were the true applications, and the true way in which the true blanks should be filled up, according to the meaning of the import of the paper, because if they differ as to the application or meaning of the paper proved, whether they are not the same as charged upon information, and if they were different from the sense put upon the information, by those inuendos in it, then they must acquit him.

The next thing was, with regard to the evidence of publication; I told them, if they believed the witness to speak true, there was evidence of the publication by the defendant; but, if they did not believe them, they must acquit him. I told them it was strengthened prodigiously by their having called a witness and sworn him, and prudentially not offering to examine him; by mistake, as I understood, I called the witness his servant; Mr. Serjeant *Glynn* very properly objected to that, he said it was not his servant, but another person; and said to the jury that it was another person; but the defendant had it in his power to have examined any, or all of his servants, if he thought fit.

The direction I left with them was, if they were satisfied with the application of the paper, made by the information, and what the witnesses swore, they must convict him; but if they were dissatisfied with either, they must acquit him.

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I likewise told them, as to the epithets given of seditiously, &c. that they were inferences of law, and not necessary to give any evidence of them whatever, and if they found him guilty, and the paper was a harmless paper, so found by them, with all the blanks filled up, it would not affect him: they were inferences of law, drawn from the paper itself; if the law warranted such inferences, they were not facts to be proved, so as to extenuate it, that was a different consideration; if legal, it would appear so upon the record after their finding; and I did not make one observation, either one way or the other, upon the paper itself, nor the contents of it.

The jury, after staying out some time, came in; I was told then one gentleman had a doubt, upon which another in his own name, and the eleven, said it was not the doubt of all the jury, but of that gentleman; I certainly did understand that the eleven was satisfied, or had no doubt, which was the same thing, but that was sufficient to convict upon. I did otherwise certainly understand, that the gentleman who had the doubt, which was, whether the evidence was sufficient to convict upon; my answer was applied to that point; but as I called particularly upon the Council, to recollect with precision, the whole that past, I was sure it was impossible to make a doubt of it. I shall say nothing at all of the precise form or manner, till I hear what is said by the Council on both sides. I believe there will be no sort of difference between them.

This is the whole state of the trial, as near as I am able to state from notes and my recollection.

Mr. *Solicitor General* (now Lord *Thurlow* and Lord Chancellor.) Please your lordship to favour me upon the part of the Crown in this cause; now whether it was taken upon the evidence or upon any conversation which could possibly arise, or upon any which actually did, according to my opinion, or the imagination of any gentleman, upon the evidence; it seems to me, upon the mere state of it, and I am warranted to say to the Court, upon the evidence, that there is

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not, nor cannot be, any ground to grant a new trial. If taken upon the evidence itself, your lordship sees no argument can be raised, which was upon loose discourse attempted to be raised upon it; which was, that it was incumbent upon the prosecutor to prove the whole of the offence, and that part of the offence was the mind of the person offending; and consequently that the prosecutor undertaking to charge the defendant with a criminal act, was bound to prove the fact, and the intention of publishing the paper.

The question arose upon this, whether the defendant has not upon the evidence been convicted fairly of the fact, and of the intention to publish this paper? My lord, with respect to that where there is various sorts of evidence in all manner of trials, some is a direct evidence, some is ocular demonstration, others is the evidence presumed to be right, though too full of doubt, that is what all courts take notice of upon all trials. By presumption he may be convicted of the highest offences as well as the least.

The fact is, *Mr. Almon* is proved to keep a book-feller's shop in Piccadilly, he is the keeper of that shop, it is proved that different applications were made at different times of the day, by different persons, in order to purchase the pamphlets in his shop. It is proved, in the ordinary course of his business this pamphlet was delivered out for the ordinary sum to be paid for it in the course of business, by a person apparently in the ordinary manner employed to transact business in that shop, that is proved.

The question upon that is, whether this be or not a publication? Undoubtedly this is the only publication which *Mr. Almon* has ever made of any kind of book whatsoever, and only can be made by any bookseller whatsoever; if, therefore, this be in its kind criminal, *Mr. Almon* is as much charged both with the fact and the intention of this publication, as he is with the fact and intention of any publication in his shop.

The only question arising upon it is, whether this be *prima facie* evidence or not?

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I did not understand that it was ever pressed by any body, much less delivered from the Court, that this was the sort of evidence which was conclusive at the bar. If Mr. *Almon*, being the master of his shop, and perfectly well acquainted with what was done there, could have verified the opening of the learned council, if he could have proved this paper was put into his shop without his privity, and sold there without his privity, for it had been so stated, That a paper advertised on the first sheet of it itself to be sold in his shop, and put there without his consent, and sold before he was apprised of it being put into his shop, the moment he was, he sent it back, and determined to have nothing to do with it, these were all the facts he could have proved with respect to inconveniency, and amounts to nothing. The manner in which he was convicted is this, the jury then thought that the fact of its being openly sold in a bookseller's shop, kept by Mr. *Almon* in a public manner, was *prima facie* evidence, that Mr. *Almon* did publish the book, and no evidence being called to the contrary, consequently a conviction of him in that manner. I don't very well understand whether the objection goes to the whole of the cause as the jury have found, because that was insufficient to prove it, or whether the gentlemen have understood that any misconstruction was received touching the point. I don't understand why the gentlemen intend to press that, all I can say upon the last part is, I did understand your lordship's directions to be no more than this.

Lord *Mansfield*. I should think they had better go on upon the other side.

It being agreed to, Mr. Serjeant *Glynn* began:

My lord, I do conceive that I am prepared to submit to the Court, an objection very becoming me as a lawyer to submit, because I do conceive it is an objection of that kind that goes to the first principles of justice; and if I am not very much mistaken in my apprehension of the effects and consequences of evidence, that which I shall now contend for, is that line
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which tends to secure the innocent from punishment, and direct that to fall upon the real delinquent. I do conceive, it is not the private opinion in any man's case whatsoever, but certain safe rules which must be pursued; and if not convicted by those rules, he don't ought to be exposed to punishment. I conceive it to be an inviolable rule of justice, and known to be the laws of this land, and particularly received by them, that the INTENTION is necessary for the CONSTITUTION OF GUILT; particularly, his *privity* and *consent* are *inferences indisputably necessary*; I shall therefore indisputably submit to your lordship, all these necessary ingredients are wanting in this present case. I shall submit, upon the state of the evidence against Mr. *Almon*, there was so far from being any proof of a criminal intention in Mr. *Almon* himself, that there is not, by any legal evidence, the fact proved upon Mr. *Almon*, by which such kind of guilt can be inferred in any degree. The evidence against him is no more than that the pamphlet has been bought in his shop, which pamphlet has been informed against as a seditious pamphlet; but of whom bought does not appear in evidence, nor even that it was the servant of Mr. *Almon*. Upon that one unsupported circumstance, of Mr. *Almon*'s being a book-seller, and that book being bought in his shop, they rest. With respect to that other circumstance which was produced, his name being set down as the publisher, your lordship was remarkably kind; and if I had not been convinced of it, you would have informed me, but I was prepared to shew, that what was the act of *others*, ought not to affect Mr. *Almon*. It was the *advertiser himself*, and the *ordinary course of booksellers*, which was *not* contradicted. That, in most cases, persons are advertised as publishers, *whose situations are convenient* for the publication and sale of the books. I shall submit, it rests upon the single circumstance, whether Mr. *Almon* is *legally* pronounced guilty, because this book was sold in his shop? I do conceive it the undoubted maxim of the laws of this kingdom, that no man should be *criminally* answerable for the acts
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of his servant. There are many cases in which men are made answerable for the conduct of their servants, and they are liable for any mischief their servants shall do, within that particular department of service in which they think proper to trust them; but, my lord, this rule can never be extended upon this part of it. And it has always been agreed, that the master is not criminally answerable for the act of his servant. My lord, it will be extremely mischievous if otherwise. In that case, it would be in the power of a servant, at any time, to subject his master to *criminal* punishment, if his master thinks proper to trust him, was the servant of Mr. *Almon* to sell the book in his shop without his direction?—If that evidence was to be conclusive against him, it is putting all the booksellers in this kingdom at the mercy of their servants. The danger becomes greater when applied to servants. In this case, where the servant does not appear to be the servant of Mr. *Almon*, he is not proved to be at all entrusted by him. The Court has no information who the person was. The danger is great, because it was in the power of any person, to subject another by this act to a criminal prosecution. Upon these grounds I contend, and I hope the jury will not think the criminal charge against Mr. *Almon*, was by good, colourable, and legal evidence sufficiently made out, for the purpose of convicting Mr. *Almon*.

There are a great number of cases, where *possession* is, by the positive laws of this land, made to be the rule of evidence in some degree. In those cases, though the possession is not even there conclusive evidence, to subject that person to punishment, that proves himself ignorant of what is done. By the positive provision of the laws of this land, the *onus probandi* is thrown upon the defendant; I should conceive, that in all other cases, the whole proof rests upon the prosecutor. The prosecution is to proceed by the strength of the evidence the prosecutor produces; and unless he produces clear and convincing proof, of every necessary circumstance of the charge he undertakes to support,
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he has no right to call upon the defendant for explanation. It was upon that rule I did proceed: and the evidence to affect Mr. *Almon*, not calling for witnesses to exculpate him, because I thought it must be proved criminal, before it was decent to attempt an exculpation of him: and for that reason, I did not call that evidence in favour of Mr. *Almon*. And if this verdict should prevail, it would be the first I have known in this Court, against an offence not proved; and I do say this was not sufficient evidence to convict Mr. *Almon*. Let us suppose this had been an indictment for any writing, declared by particular laws to be high treason. Very early upon the succession of this family to the throne, there was a writing, declared by the 7th of Queen *Anne* to be treason; that was the case of the booksellers. Let us suppose the evidence now against Mr. *Almon*, produced to support that charge. My lord, it will never be said, that any man should be brought into a dangerous situation, by such kind of proof as has been produced to the Court, in the case of Mr. *Almon*. Where then is the line of law drawn? Is there any different rule of evidence, with respect to proceedings upon high treason, or rather offences? though different offences point out different rules of evidence. If they do, it is of great consequence, that those rules of evidence should be certainly known, and well established. But, my lord, unless it is by particular provision of the legislature, I do conceive there is no different rule of evidence, with respect to the offences with which a man can be charged: and, in law, what would be evidence to affect a man, with that which amounts to one crime, would be evidence to affect him with the same act, if that did, in the construction of law, amount to another crime more large; and, in cases of great moment, would be exercised by the Court and Jury. But there is no other difference: the clear rule of evidence, pointed out by the law, must be the same. I do submit, if this would not be evidence to convict that person, (I don't now recollect his name in the case of the 7th of *Anne*) it would not be

be evidence to convict a person, charged by indictment with an offence at that time; it could not be evidence to convict any other man whatsoever, of the act of unjustifiable publication. In all other offences whatsoever, where a presumption is light, and distant presumption is not enough to put any man upon his answer, upon all the prosecutions I have known for felony, if the circumstances are light of the felony, the man is not called upon to answer, and the jury are instructed to acquit him upon account of insufficient evidence.

I agree with the Solicitor General, that positive, ocular evidence, is not the only evidence; there is evidence as infallible as that ocular evidence can possibly be; there is what is called a violent presumption, as that now before the Court. If any thing at all could be that kind of evidence, as must arise from presumption against him in a civil act, so as to call upon him to answer, it is not that violent presumption, importing in its own nature, without addition or corroboration, immediate conviction of guilt. I shall beg leave to submit some considerations upon it, regarding it as that kind of *prima facie* evidence that should weigh with the jury. Undoubtedly, the utmost weight that can be given to evidence of this kind, is of that sort. If therefore it is presumptive evidence, if it is *prima facie* evidence, it is liable to refutation by other evidence, and by arguments; and the jury, therefore, are to revolve in their minds those arguments, and consider and determine upon the weight of the evidence. And, my lord, if you apply this rule to the present case, I shall beg leave to remind you of those circumstances of the return of the jury, the direction they received from the learned Judge upon the Bench, and the question propounded by the juryman. I profess, I would not in this, or any case, repeat to the Court what was not, to the best of my recollection and information, the truth of what passed in the Court at that time. I did, my lord, upon the first moving for this rule, mention to the Court, that when the jury returned, after having considered, for a long time, (I think it was near an

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hour and a half, or two hours) Mr. *Mackworth* premised this question to the Court, Whether the bare act of felling, in a bookseller's shop, without any privity, knowledge, consent, or direction of the master, was sufficient to convict him? My lord, those were the words, that I do apprehend Mr. *Mackworth* to have used, when he proposed that question to your lordship. My lord, I did not wholly depend upon my recollection to mention it, but I endeavoured to collect the best information I could get; I endeavoured to supply myself with the most accurate notes that were taken, and I endeavoured, that I might not misrepeat another gentleman's words, and to learn, from the best authority, whether these were the genuine state of the expressions by Mr. *Mackworth*. All this is confirming of it. Thus I understood him: that though he was not convicted in his own mind, by the evidence produced, that Mr. *Almon* was privy, consenting, or knowing of the book that was sold, yet Mr. *Mackworth*, not being bred to the law, but from a good understanding, and liberal education, he is very conversant with the general rules of justice; and I conceive his meaning to be, that there might be some positive law of this land, where there was a particular application to the case of booksellers, and distinguishing their cases from all other defendants; and that they might be, by an act of their servants, subject to guilt, without an intention in themselves though they did not act constructedly, and though they did not act at all, nor were privy to the act that was done. Thus I understood Mr. *Mackworth*; and if I did not understand him, Mr. *Mackworth* then, in the direction your lordship gave, most certainly was not rightly directed. I mean, that with attention to the question of Mr. *Mackworth*, I may venture to submit, the drift of his question was to be so informed, because he then went away with an opinion, not, that he was to examine and weigh the effect of that evidence which was produced; not whether he was to determine, whether that presumption, submitted to the consideration of the jury, was what he

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was to examine; and not, that he was to put the question in his own mind, whether he was convinced of the evidence or no; but that it was a rule of law, cogent upon him; contrary to what he understood to be the justice of it; and even contrary to that, he was obliged to find the defendant guilty. Thus I understood him: and this he declares to be his own sense of the matter. I have here his affidavit, which confirms me in what I have stated; and he is not, to this hour, convinced in his mind, he ought to find Mr. *Almon* guilty of any concurrence whatsoever. Stating the dry, naked fact, there was not his privity nor concurrence. Let the person who sold it stand in what relation he will to Mr. *Almon*, that proof is not sufficient to affect him immediately. That act is not the act of Mr. *Almon*, and it cannot be considered as criminal conduct in him. That will not support the present verdict. And it is necessary to resort to it by way of argument, to prove there was the concurrence of Mr. *Almon*. If the jury thought the negative to that concurrence; if it was their opinion, they ought to have acquitted Mr. *Almon*. One of the jury then rightly understood so, and now pronounces Mr. *Almon* not guilty. We have no information of what was in the minds of the other eleven jurymen. If Mr. *Mackworth*, when he applied to the Court for information, had had the fortune to have his question understood, and his doubts solved; if he had been told, he was the constitutional judge of that presumption, and there was no particular rule of evidence that distinguished the publication of books from other evidence in other cases, I should therefore conceive, though there was no misconstruction of words, yet there was a misconception, upon which this verdict was founded; and it was founded upon a mistake of the law; a misconstruction of your lordship's words; and, consequently, a mistake in law in Mr. *Mackworth*.

That being the case, and by being a judge of that fact, by the law of this land and upon his oath, he is obliged to administer to the best of his judgment; I
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say, if he judges upon the matter, that the fact is not well proved to convict (though the fact must support this verdict against) Mr. *Almon*. Then I submit to your lordship, it would be highly injurious to judge and consider Mr. *Mackworth*, as having concurred in this verdict. It is often said, that the affidavits of jurymen, upon motion for new trials, would be of dangerous consequence. That can never be, but when there is a supposition of its proceeding from what he may hear after the trial; but when from converse in Court, that person would be called upon to give an account of it. But your lordship need not be ascertained what were the words, consequently knowing the meaning of Mr. *Mackworth*; and that Mr. *Mackworth* has been deceived, or misled, by what fell from the Bench. If that is the case, the verdict ought not to stand; because, if it should, then it would be a verdict convicting and sentencing a man to a very high punishment, upon the finding of eleven jurymen. I should therefore submit to your lordship, upon what I have now stated, that Mr. *Mackworth's* affidavit ought to be read.

Lord *Mansfield*. You know it cannot be read.

After some altercation with the Judge Mr. Serjeant *Glynn* sat down, and

Mr. *John Lee* (Council for the defendant) rose. The subject before the Court is, whether the evidence upon the trial was proper evidence to be left to the jury in this case?—I conceive it is not one exception, but is universal, that in criminal cases, if the intention is innocent, the man is innocent. Yet there are reasons, many might occur to the jury, to the gentleman particularly who premised this question, which would make it doubtful; for upon this very subject, the prosecution of booksellers, there are cases in which the jury must attend to the principle of law more than to the principle of justice; and it is possible that Mr. *Mackworth* might have one of these cases in his mind, or might conceive your lordship to be referring to them; and if I had been in his situation, I verily believe

lieve I should have acted exactly as he has done. My lord, in the case of the King and *Elizabeth Nutt*, reported in *Theobald*, where it is laid down by Lord *Raymond*, that the sale of the pamphlet in the shop, for the account of the mistress of that shop, for her profit, though without the privity and knowledge of the contents of that pamphlet, or that it came into the shop at all, was evidence to convict.

Lord *Mansfield*. You mistake the very ground upon which the determination was, for in that case the defendant proved it was without her knowledge, when absent. The ground of the opinion was the profits arising from the sale of the pamphlet were on her account.

Mr. *Lee*. I will read the words of the note, my lord. It appeared the defendant kept a pamphlet shop, this libel was sold in her shop, for her use and benefit, in her absence; she did not know the contents of it before its coming in or going out. By Lord *Raymond*, notwithstanding that she is guilty of publishing, the shop being kept under her authority and direction, he says, in all these cases, the mischief is equal, though the parties intention do not concur.

Lord *Mansfield*. Are there not words that she received the profits, I am sure there is.

Mr. *Wallace*. It has been ruled so in a great many cases that would be of dangerous consequence if otherwise.

Mr. *Lee*. I apprehend the mischief is equal, the intention of the party does not concur, it is stated negatively in that case, the party did not know the intention of the libel.

Mr. Justice *Ashton*. I have it not in that case. The principle Mr. *Lee* went upon was this, where a man kept a bookseller's shop, it would not be presumed it was bought there or sold by any stranger, but by the master or mistress of the shop. He must, if he will suggest any thing of that kind, give proof of it; so that till that proof, it is unreasonable and would be absurd to the last degree almost for any

man going into a shop (the master is bound to deal in that shop, according to law, and to take care that the things sold therein are proper) when a man goes to buy a pamphlet in that shop, professedly sold there, the buyer can't tell whether that was the servant or no, the man he buys it of in a shop selling those things, that is *prima facie* evidence to be left to a jury. The master may come and say, I have no such a servant, I will call all my servants to shew you they sold no such a thing, and if sold by any body else and by surprize, that is also evidence to be left to a jury: but if sold by a person commonly selling in the shop, that is likewise evidence of it.

Mr. Lee. My lord, I should be sorry, and nothing can disturb my mind more than to have it so said, that I advanced any thing incorrectly, with a view to suppress any part of it. I take upon me to say, it appears to me, and I apprehend the case to be so stated, that the party had no knowledge of the sale of it; it appeared in these very words, she did not know the contents of it, nor of its coming to her shop.

The case now before the Court appears to me, my lord, to be a matter of very serious moment,—Sale in Mr. Almon's shop, unattended with any other circumstance; that the absence of the master was sufficient for a servant to subject that master to conviction.

Your lordship knows very well, that the very business of a bookseller requires, that he should have all the publications that come out; that it will frequently and necessarily must happen, without his knowledge, without any act of his, or his approbation; or otherways, if he goes to his country-house, his servant has notice of new books coming out, without knowing the contents, sells them; this man is punishable. But, my lord, I take it to be indisputable, that the paper might be an act of high treason; I am not speaking of the present cause, but supposing the publication of a paper, which might be an act of levying war against the King, there is no doubt, provided it be relative to any particular treasonable act, and an exhortation to
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do personal violence to the King, that it would be an act of high treason. Will it be contended before your lordship, that the sale in Mr. *Almon's* shop, no matter by whom, without any evidence, is a direct proof of his approbation? that the person selling it, was appointed to sell it? that would be evidence to be left to a jury, that Mr. *Almon* was guilty of this great offence? and yet I confess, I do not know any distinction there would be, if this is evidence to be left to a jury, of Mr. *Almon's* knowledge, and consequently his act, which would certainly be equal evidence of knowledge in one case as in the other; and that knowledge in the case of a treasonable pamphlet, would take away his life.

There is no doubt, that in many cases, presumptive evidence is sufficient to be left to a jury, and to convict; but I submit, that conviction must arise from some act of the party, as the case of a man's coming out of a house with a bloody knife, or a bloody sword in his possession, and a person found murdered in that house. It must be a violent presumption against the party: but no circumstance whatsoever, where the party has seen nothing, but an action which he might not know nor concur in. I submit, it would be of the most fatal consequence, if that sort of evidence should be held sufficient to convict. I do apprehend, there can be no doubt in the world of the cases I alluded to. If they are not to be taken to be law, I apprehend it to be a principle of natural justice, that if they prove the party's intention was innocent, the man himself is innocent.

Mr. *Davenport* (likewise of Council for the defendant.) I hope your lordship will favour me to say a few words upon this affair. I think it will be necessary, to fix the ground of the argument upon the facts that passed at the trial. I took the most accurate notes I could, and collected all I could; upon them it appeared, that Mr. *Mackworth's* question, standing, as Mr. Serjeant *Glynn* has stated, upon the affidavit, and from the best information he had of it, I don't find that there was a different

different mode of any one circumstance or word disputed. I understood you, my lord, that when you first gave the answer to Mr. *Mackworth*, telling him he did extremely right, that you was glad to hear, and always was ready to solve the doubt, of the jury; that you had always understood, that the evidence of a sale, or exposing to sale, in a bookseller's shop, was sufficient evidence to convict him; and if there was a trick or fraud in the business, it would come from his side, properly, to shew that he had no concurrence in it. So I understood your lordship; and so, I believe, it was understood by the jury. Your lordship then immediately afterwards said something to Mr. Attorney General, or Mr. Serjeant *Glynn*, Be so good as to attend to the words, in my direction to the jury; and then your lordship repeated those words, *prima facie* evidence of his guilt; so I apprehend the exact state of the case to be.

To be punishable for a libel, he must be the contriver, procurer, or malicious abettor, knowing it to be a libel.

Mr. *Almon* did not know this paper to be a libel. But the question is, did he or not disperse, and, by that, publish the libel imputed to his charge? Your lordship will recollect, that the paper or book was bought of a person, or a boy, in the shop, not describing the person or boy, but by inference or presumption supposing him Mr. *Almon's* servant. The person in the shop, the evidence said once, was a young man; then *he said*, a boy; then, a person in the shop. This is all the evidence. I took it down upon the cross examination. And your lordship sees he is only by presumption and inference, brought home to be a servant of Mr. *Almon's*. As to his being employed, there is no evidence of the employment, or that this man belonged to Mr. *Almon*, otherwise than being found in his shop.—Cases innumerable may be found, where a bookseller would be liable to this sort of punishment, and be put in danger of his life every day from it; if these buyers, meaning to be informers, under the idea of a supposed

servant in the shop selling a pamphlet or paper, was to put in his pocket and bring into the shop those very pamphlets, one in the morning, and another in the afternoon, and carry them out again, and say he bought it there, Mr. *Almon* would be found guilty of treason, and every other species of crimes, by that means. If that is a case impossible to be put, then how can any person set out upon saying, the presumption or inference will prove the sale sufficiently against the master of any shop? Is there any presumption or inference in law that can arise against any man, in a criminal case, without some act of his own? Must not the circumstances arise out of some act of his own? It is so in every case. Suppose a man having been guilty of a crime, and several suspicious circumstances having been found in those circumstances, almost taken in the manner, but not exactly brought home to him in the last fact; if he is charged with every circumstance leading to that fact, it would not be sufficient to convict, as it must arise out of the *man's own act*.

My lord, I have never found it laid down in any case that either the selling or exposing to sale, would make him guilty of a crime if he did not know of it. In the case of *Bernardiston Skinner*, what the Chief Justice says is this, It would be dangerous if the law took it otherways, if the selling in the shop for the master's use, and the master not in the shop, was to be called a publication of it, if that was the case I apprehend very few people would be safe in this town.—Every body knows the booksellers send books to different parts of the country and town, without examining the contents of them; would the master be found guilty of publishing the libel by his servant's sending it to any person in town or out of town? How does this case differ? So far that the account is kept of the book being sent, and, according to the usual custom, it induces the servant to take this upon him. Can that be called a publication of the master? With respect to presumption, or inference, none can be taken in this case. I have

have never found it laid down that that could be taken as evidence.

In the case of the bishops, where it was argued by the Solicitor General there, as it has been by the Solicitor General here, that the presumption was undeniable evidence of delivering that petition, with which they were charged, to the King by themselves. The proof did not come up to it. The then Solicitor General insisted, that the writing, composing and signing, which they had confessed to the Council Board, which proved that that petition was in their hands, and it was a natural presumption that it must come out of their hands. Upon that presumption he rested. He was told by Chief Justice *Wright*, they could not even suppose it; that it was their business to prove it; that they must bring proof of it; it was dangerous that such sort of evidence should be held good. It was answered likewise by Chief Justice *Powel*, that it was equally necessary, and equally dangerous too, that people should be found guilty, without good proof. And I take it, if there is any defect of evidence upon the part of the crown, that it is the duty of the Court to assist in the acquittal of the defendant. If having evidence, and not being found to produce it, I apprehend that no presumption ought to arise out of that against the defendant. It was the fault of those who are the first publishers of it; I hope his guilt cannot be collected from the transactions of others.

Mr. Solicitor General seemed to think that no objection of this sort could come out of the mouth of a lawyer. Very good lawyers have made this objection; and I believe very strongly insisted upon it. Can they suppose there never was any other evidence against a bookseller than this? I would ask them, if they rested upon such evidence in the King and *Woodfall*? Whether they did not bring it home, by proving his being seen in his office at the time it was first purchased? By being in a room adjoining to his office the second time of purchasing?

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If from any misapprehension in this cause, if from a misapprehension of the jury, as it seems clearly to me to be such; the gentleman who stated this question in a very precise manner, as often repeated to your lordship, if from the misapprehension of him, he had found that verdict, that he apprehended it not conclusive and not so binding upon his conscience, though he probably would not have found that verdict, but from a misapprehension of your lordship's direction; who stated to him, that it was *prima facie* evidence of Mr. *Almon's* guilt, to which the jury were bound to pay attention. But if it had been stated that the judgment of the sufficiency of that evidence was with the jury, then the jury would have satisfied themselves. But if they apprehended it to be conclusive and binding upon their consciences, as men regarding their oath, they had found a wrong verdict by mistake in a point of law, it might entitle the defendant to a new trial. And I apprehend the opinion of the Court will be to give a chance of another trial by another jury, who might, and I hope will be told, that they are the judges of the weight and force of the evidence; and I am sure if your lordship thought there was the least misapprehension, your lordship would be inclined to let him have a new trial. No injury can be done to any man by granting a new trial, no delay of justice. But here, if he is to be convicted upon this evidence, the law will be very loth to say it was conclusive and binding evidence; for upon the least degree of evidence he has been found guilty of what he might have been acquitted; and in a case of information, *ex officio*, by the Attorney General. If this cause had come before the Court, in the common form of information, Mr. *Almon's* own affidavit to exculpate him would have been admissible, and must have been read in Court, but no such evidence can be read in this case; the jury were told it might come in extenuation of his punishment; but I submit, that comes too late, when it is not to acquit him. Your lordship might have told Mr. Attorney General, he might fail; that he must support
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his information by sufficient evidence; that the exposing to sale by any person in a shop was not conclusive evidence against the master of the shop. Or in the other case, if there is the least misapprehension, either in the direction of the judge, or the misapprehension of the jury of that direction being rightly given, I make no doubt your lordship will be inclined to grant a new trial.

Mr. *Solicitor General* (now *Lord Thurlow*.) I am extremely obliged to your lordship for having stated the several grounds. I now understand them both ways. In the first place, supposing the jury to misconstrue it, and as a *prima facie* evidence is a presumption, which in itself was not a presumption. But they contend that they have been given to understand, that the jury were if well directed very unapprized of what those directions were; they blundered in receiving them, and that they went upon an idea in direct contradiction to their own mind, and in that sort of manner, by mere blunder on their part, have given a verdict they did not intend to give. Something has been said of an affidavit which Mr. *Mackworth* was disposed to make, and I apprehend does not reflect any great honour to Mr. *Mackworth*, and the gentleman who produced it. When that is considered that the words were supposed to be so, which I say were not the words exactly which are supposed to be said by Mr. *Mackworth*, and he ought not to be put to the very disagreeable task of proving by affidavit that he went upon that idea, which they are obliged to impute to him in the shape of a blunder, in order to suppose he mistook what he was about. Your lordship knows it was impossible to be so. Some of the learned gentlemen insisted there was no sufficient proof against all manner of presumption; there is no sufficient proof that the man himself, who sold the paper or pamphlet, was Mr. *Almon's* servant. It is necessary they say that all presumptions should arise from the fact of the party from whom by presumption collusion should be drawn. The fact of the party in this case is, that Mr. *Almon* kept a public shop
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for the sale of books, and that the books were sold there under his administration in the shop, under his authority, for his use, and upon his account; that at two different periods of the day applications were made to that shop, and the book was bought of a person in the shop, the books were bought there, and the books were marked so and so, and that proved Mr. *Almon* had the sale of those books. They say we have not proved Mr. *Almon* ever paid wages or made contracts with that servant, and he thinks it is too strange a mistake, and too gross for a jury to presume that a man that only acts in the character of a servant, is absolutely a servant, unless you can also go on with the proof and establish the contract between the master and the servant, that is the fact as it stands.

Mr. *Davenport*. I beg your pardon Mr. Solicitor, I talked nothing of that fact, I was shewing that the servant, if he was such, sold the books without the knowledge or consent of his master, and his master could not be answerable for that.

Lord *Mansfield*. He pushed the objection with extravagance.

Mr. *Solicitor General*. I should be sorry to have merited the imputation of the Court for a misunderstanding of the affair; the objection was, it did not appear he was paid wages. I am the more fortified in this because another learned gentleman upon the same side said, or rather pressed, if he was proved to be the servant, the information might have proceeded against him, and not against the master.

This is the instance in which the jury are taxed with having behaved grossly. I think they might, without behaving very grossly, find that a person acting in a bookseller's shop in the article of selling, according to the stated prices, and conducts that business by a servant, is the publisher. It is said; suppose this person was a servant, there is no presumption that he acted there without the knowledge and privity and consent of his master, and the argument is upon that, and as I understand the question turns there,

there, Whether the jury, being properly directed to consider this *prima facie* evidence, they did or not do right in finding, upon that sort of evidence, the sale by the servant there was the act of the master.

My learned friends misunderstand me exceedingly if they understand that I asserted by what I said, that the master is in the judgment of the law to be criminally answerable for the act of a servant. Supposing it is an act of the servant, and they should proceed upon that evidence to condemn the servant *eo nomine*? That is not the argument I made use of when I said, I was unapprized what argument a lawyer could make use of upon this argument. I did not mean to point at such an unjust argument as that, what I insisted upon here is, that the conduct of the shop being administered by the master, that servant employed by the master in the conduct of it; this book being sold there like all the rest, is as much upon the master's account, and is referable to the master, and all the presumption upon it is as strong as possible; one might as well rescind from a contract as to deny the presumption that that is not *prima facie* evidence and proof that the book is so sold.

It is insisted on that *prima facie* evidence is liable to be answered. I know it, I take it to be the very quality of that evidence to admit the matter proposed to be proved, till the contrary is proved by distinct evidence. *Prima facie* evidence, they say, is likewise liable to refutation by argument, which is a proposition I don't very well understand the terms of; for the first proposition supposes there is evidence which *prima facie* proves the matter intended to be proved, and it is not to be refuted by argument; it is fact, that that which is disproved by evidence, may be said to be disproved; but it seems to be a direct contradiction of terms to say that *prima facie* evidence is to be refuted by argument.

They say eleven of the jury were very clear; it is a wonder that eleven of the jury were clear about it! My only wonder is, in what manner they will be able
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to make out that Mr. *Mackworth*, after what passed in Court, was not clear upon it. In order to prove the contrary, though they insisted upon it that the question put by Mr. *Mackworth* to the Court was, Whether selling without privity of the master was sufficient to convict him? I understood the question to be selling without proof of privity; it has been took down so, as delivered from *Mackworth* himself, by a short-hand-writer attending in Court; from my close attention to the terms of it, I am clear that was the question. I take upon me thus far as to say, if the jury had said, we are of opinion negatively that there was no knowledge, no privity, no consent, and we have formed that opinion already in point of fact; and if the jury had said so, if eleven of the jury had assented to it, if they did, your lordship would not suffer eleven to be imposed upon no more than Mr. *Mackworth*. It seems to me a difficulty that any gentleman that understands the technical terms of the law, can conceive that where the negative in any question is previously put, and technically established, there should be left no question at all. If Mr. *Mackworth* did use those words, it is natural to understand them in the sense they have been universally understood by me, Whether selling by the servant, without the actual personal interposition of the master was or not sufficient. Now there is no difference that I am able to recollect concerning the answer given by the Court, who did not content themselves by telling the jury that was *prima facie* evidence, and how far that would operate; but the Court explained that evidence, by telling them that was that sort of evidence, which standing single and uncontradicted, was sufficient to insist upon, in order to prove it, and it was liable to contradiction by proving the contrary. Will any friend of Mr. *Mackworth's*, and any person that honours him as much as I do, conceive it possible that he should go away from this Court persuaded that your lordship meant to direct him in case he was of opinion negatively, that in that case he should be obliged to find the party guilty, when

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your lordship took such exprefs pains to tell him what would tend to disprove that *prima facie* which arose upon that evidence. It was what upon the part of Mr. *Almon* they had stated before, and what they intended to prove, and had argued during the opening to the jury; upon the same ground your lordship directed them to consider when they went out. They argued they would disprove the *prima facie*, by proving the negative, and that the sale was an imposition, accidentally put upon him, but they proved no such thing. If any man by fraud had been to the shop, and bought a book, when it was not the mind of the party to sell it, that was to be the proof of the matter, but without such proof as that *prima facie* evidence was in one short term, which your lordship has took pains to explain in many cases. *Prima facie* is a sufficient absolute determination of the truth contended to be proved by it, till something is proved on the other side, to avoid the conclusion which arises from *prima facie* evidence. Upon this it seems to me to be impossible to suppose that Mr. *Mackworth* could have gone away under that sort of conclusion; but I am sure if he never had been directed by them, he never would have thought of making this affidavit. It has sometimes been a question, whether an affidavit of a juryman should or not be received? In the second of *Croke*, 710 f. *de novo*, not *desstringas de novo*, if they never had reason to be attended to before, there is the strongest reason in the present instance why the affidavit should not be admitted to be read, because it is impossible for a juryman to say a month after the trial he misunderstood such words. I am persuaded it is always possible for a juryman to say at the time the charge is delivered that he misunderstood the terms. It is said it would be no delay of justice to grant an opportunity for a new trial. Upon the contrary, it would be a very serious delay of justice indeed. I am not now to enter upon the nature of the crime any farther; I should think it deserves the interposition and correction of the law; and to admit of any given time whatsoever, it is a delay

delay of justice, and in this case I hope your lordship will not make the rule absolute.

Mr. *Morton*. Please your lordship to favour me a few words upon what has been so largely dwelt upon by Mr. Solicitor General.

In this case, if there had not been a change of sentiments by the gentlemen upon the part of the defendant, after the opening was made it would have been impossible for the Court (if it is a doubt now laid before the Court) ever to have resisted it, if the learned Serjeant had not opened facts which carried along with it a proof upon the part of the plaintiff, and after having opened those facts had not stopt short, and left them totally unproved. It was impossible for a jurymen to consider for two hours, or two hours and an half, and at the same time to have the assistance of eleven jurymen for that time, and to make a mistake then; and I do suppose an abstract of his opinion was taken afterwards from the gentleman that asked the question, who at that time thought the answer satisfactory; if he had thought otherwise, it was easy enough for him to have replied, and put an end to his doubt of that question which was left to the jury. As the question now before the Court appears, the crime arises thus: Though the exercise of a man's common calling be legal in itself, it may be abused in its particular exercise of it. The trade of a bookseller is lawful in itself, but selling books that are not lawfully published, and unlawfully dispersed, is a proof of the illegality of carrying on that trade in the manner charged in this information. If they could have proved otherwise, without taking up the time of the Court, they might have demurred, and said, *Junius* has nothing illegal in itself.

It is now contended, supposing the law has been abused, supposing the legal exercise of that trade has been in this case made criminal, yet Mr. *Almon*, the bookseller, is not liable, but his servant is liable. That is sufficient to answer all purposes, because if he is liable in law, the master must be liable also, by the
servant

servant selling the paper upon his master's account in his master's shop.

But what another gentleman laboured to shew was, that Mr. *Almon* is not liable, because it does not appear even now, nor did at the time, that this book was bought with Mr. *Almon*'s knowledge, privity or consent, or so much as bought of his servant. If that was not totally destitute of all manner of truth, I agree with the Solicitor General that it was so; but if truth, before the jury had gone from the bar, they should have levelled all that artillery of argument which they say is capable of weakening *prima facie* evidence, so as not to be attended to by the jury. The learned Serjeant, however he could invalidate the degrees of proof arising from *prima facie* evidence, did not mean to let his client's cause rest there, and thought it more material to tell the jury, that this evidence was not sufficient to satisfy them. Why is he not liable? Why? because it was without his privity, not even knowing this man to be his servant. Will Mr. *Davenport* contend at this day that if the sale of books every day in a shop, whether good or bad, that is not to be left to the jury, whether that man that sells them is a servant or not, is the jury not to attend to what is the import of the matter of fact? Is Mr. *Mackworth* to be the only man in the audience and in the jury? And however respectable his opinion may be, is he to be the only man that is not to believe what every other person in the Court, who is not upon oath, does believe, that any man occupying in the shop, and selling for the master's use, is in the degree of evidence confessedly the publication of the master carried on there. No, says Mr. *Davenport*, you must prove how long he was the servant. Supposing it necessary to prove the time only, they say the man must be in his service some time, what number of days has he been in that service. Mr. *Davenport* says it is not to be found in the books, I have heard a great deal not being found in books, there are a vast many things not to be found in books, no man ever doubted it. Will
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the gentlemen contend that the exercise of my servant, during my absence, is not to be left to the jury, or to any twelve or twelve hundred men, that that man was acting as my servant; and by my consent? It may be difficult to find, perhaps, instances similar to this offence arising out of the trade, the exercise of which in part is lawful, and in part not; there are things which are lawful in themselves to be sold in some particular places, unlawful to be sold in others, lawful for particular purposes, if bought with that intention, and it may be unlawful for another purpose, if bought with such intention.

There is a law that any man in this town, in Southwark, or in Westminster, which is, you shall not sell squibs or serpents, made of gunpowder, with particular exceptions; you may sell the same by way of artillery, for matches, and so forth. If I buy things not made up in those shapes, it is a nuisance to his majesty's subjects. If my servant, in my shop, in my absence, sells my goods, is not that man selling them for my benefit? and without my proving he puts the money in the drawer or mispends it, is not that proof to be left to the jury? It was left to the jury upon two grounds, upon which your lordship has publicly mentioned to day.

Will any one say that summing up was not a proper one? I believe your lordship will never be told that there are two points which are emphatically to be left to a jury. First, to satisfy them what is a publication to be determined by a jury? The other is, whether that is so published? And your lordship stated it to the jury so. Do they believe it in the same sense with the writer of the information or drawer of the indictment, whether it is libellous, and if so to be decided by a question premised as a question of law, not as matter of fact. If libellous and defamatory of that person of whom it is supposed to be libellous, it can never be, nor is it in the power of one of these drawers of these informations to reply; neither is a matter applicable to one respectable body of men applicable to another;
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and that which your lordship left to the jury, after two hours being out of Court, they had but one doubt to premise to your lordship, whether if it was sold without the privity and consent of Mr. *Almon*, it would make him guilty? Now your lordship's answer plainly infers, that as far as possible there could be no doubt of any man that it was answered in the manner you gave the question to shew it was not the act of Mr. *Almon*, but your lordship said, selling in his own shop, by his own servant, is *prima facie* evidence to be left to you. If you believe the evidence proving the whole transaction, that the man was induced to go and buy this paper, not from any particular design to connive with the booksellers. But, says he, was carried there upon the advertisement, that imported it might be bought there in his shop. That was a transaction of his; he went and bought it there (it cannot be supposed he went to catch *Almon*) he went in the course of his business to provide these pamphlets for particular persons, whose business it is to see that they contain nothing ill in them; there he went and bought it, as he might have bought twenty if he had wanted them. How does your lordship answer this.

How can it be denied it was with his consent, without calling the person, supposed to be the servant, himself that sold it; and persons to prove Mr. *Almon*, the moment he was acquainted with it, that he immediately esteemed it as an attempt to set it forth as a libel; that he disclaimed it directly, that he has punished his servant for it, and made enquiry how does it come here, return all that are left unfold, I at once declare it an attempt of *Miller's* to subject me to punishment. Instead of that it was opened, and perhaps a great part of it carried away. Well, upon the doubt which arose upon the belief of a jurymen, and when the jury have come back again, and been satisfied upon that doubt, he comes back, brings an affidavit, and says I believe I have a doubt. Is that to be evidence? there is to be a new trial. As Mr. Solicitor General says, every cause may be re-tried over again upon

upon such evidence. Because a juryman has been talking more sensibly since the trial, or perhaps been more inflamed, and some persons have endeavoured to stir up in his mind thoughts he never conceived before; when he has heard the question proposed to the Court, and stood by and was assenting to the verdict, and said, Then, my lord, we are all satisfied. I verily believe they were all satisfied at the time, and I believe all the audience were likewise satisfied of the same, and therefore I hope your lordship will order this rule to be discharged.

Mr. *Justice Aston*. Mr. *Wallace*, you seem to have some cases there.

Mr. *Wallace*. The cases are, your lordship, the King and *Nut*; and another where the defendant proved she was bedridden during the time of this publication. Also *Bernardiston*, &c.

Mr. *Justice Aston*. Do you know of the case of the King and *Straban*?

Mr. *Wallace*. No, I do not.

Mr. *Justice Aston*. I see the state trials were not looked into, I wish they were; to see the different administrations of justice in those days to what it is now. I think there are two or three cases; there is one of *Benjamin Harris*, where there is evidence of convicting a publisher, from the evidence of buying the book in the shop of the party.

Mr. *Serjeant Glynn*. Please your lordship, I beg leave to submit a few observations by way of reply. I will endeavour to be as short as I possibly can; I will endeavour to reduce what I have to offer to the Court as short a way as I can. My two learned assistants I think have the misfortune to have their arguments very lightly represented to the Court, and for that reason I shall set out with taking some notice of that: If I apprehend Mr. *Lee's* proposition, it was thus, Whoever was the actual publisher of that book, and delivered it out of the shop, was criminally answerable for the publication of it, and there was no necessity for the purpose of public justice to find out any other man, upon

upon conclusive evidence it would make him obnoxious to the punishment, and there was no necessity to find another, if they were able to prove he did sell the book. Mr. *Lee* did not for the purpose of his argument determine whether this man was the servant or not, or observe the difference whether he was the servant or not, for it was immaterial to this cause. There was a man who was evidently and clearly the subject upon evidence to the charge of the fact, and the fact so proved, the crime imputed in the information, that man had no defence to make against it, there was a subject for public justice to take its course with, and there was no occasion for taking to any other to convict at all. Mr. *Davenport* did not, if I understand him right, turn his argument upon this man not being the servant, but said there was a degree of evidence necessary to make him a servant; if he was not his servant, the presumption becomes infinitely lighter, and what is not proved is always understood to be presumed for the defendant, so I understood the arguments of my learned friends.

I agree with Mr. *Morton* in the manner the cause came before the jury. The two objects for determination of the jury were, First, the act of publication, and I agree with Mr. *Morton* in the precise terms, they ought to be satisfied of that publication; and in the next place they ought to be satisfied of the criminality of the paper, and that which is to render it criminal is the real construction of it. My lord, it is upon the first of these propositions we now trouble your lordship. I agree with Mr. *Morton*, they ought to be satisfied of the act of publishing, but by what evidence remains the question. I have already submitted that to your lordship, and I will repeat it now. It is by that degree of evidence that will convict in any other criminal case as well as this; and, my lord, the learned gentlemen who have answered me have not shewn any one case whatsoever where it was contended that, That kind of evidence, which they now call a presumption, has ever been thought sufficient to con-

vict a man; they have not mentioned a case, I am
 sure the books cannot furnish them with a case of pub-
 lication. For that reason the case, with regard to
 publication, becomes material for your lordship's con-
 sideration, for if they took their road in an error they
 certainly would have less weight, many of them are
 revoked, and properly observed by the judges, who
 have made a difference in the determination between
 ancient and modern. They transmitted precedents to
 their successors, which precedents, if the clear injustice
 of them ever appeared, they ought to be departed
 from. If in the time of Charles the II^d. they should
 appear that the defendants were convicted upon this
 evidence, I should not wonder at that, because that
 was a period when in law they must have licences, then
 the bare possession of an unlicensed book was an of-
 fence; it was the duty of proper officers to search and
 examine for unlicensed books, and there must have
 been a conviction under the licensing act. The violence
 of the times might stretch that too far for justice, and
 too easily that might be received in all ages, but I do
 conceive, taking it in its utmost extent, it is too vio-
 lent and absurd to pass when it is to undergo the com-
 passionate disposition of a court of justice; and I sub-
 mit it is too great an error to say the simple act of the
 sale of a book by a servant should be the act of the
 master, and the master should be criminally answer-
 able for it; it is too contrary to the rule of justice to be
 received as law; your lordship understands it not to
 have that meaning, but the language sounds too
 strangely, and those cases never will have much credit.
 At the time it was received as law, no act of the ser-
 vant should have placed the master as criminal, with-
 out he was consenting to and concurring in the act.
 my lord, with respect to the cases, your lordship having
 now understood them, however that the cases mean
 no more than this, that it was a presumption. I need
 not trouble your lordship with many observations upon
 it, because I conceive if it once was established to be
 merely a presumption, then that is not a question of

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law, but a matter of fact, to be left to the jury, and they are the judges of the facts delivered to them. When the judges have said such evidence is *prima facie* evidence, it is for their private opinion, and not officially; and it is not the part of the judge to declare it as matter of sufficient evidence. It is said the presumption is violent and strong; and where it is strong, presumption is good evidence to convict a defendant. I will beg leave to submit what I apprehend to be the effect of all presumption: They say it is a degree of evidence, that in all criminal prosecutions should convict. I apprehend the evidence to be, if it consists of circumstances, from which the presumptions are raised, if there is not that concurrence of circumstances which is to strengthen the presumption, then it includes all that can take place, in favour of the defendant.—I apprehend, in law, the presumption is in favour of the defendant; and that it cannot be ascertained without a chain of circumstances to amount to a positive proof, to satisfy the jury of the guilt of the defendant; but is such a presumption only as can excuse them, such as might take place in favour of Mr. *Almon*, the present defendant?

In that case, reported in *Gibbons*, which, for the honour of the court, I would wish, and crave to be understood, to be the words of the reporter, and not of the Court; and it is necessary one should enquire and examine what are the circumstances of it; as one learned reporter, Serj. *Bernardiston*, I apprehend it was a libel upon the memory of some of the predecessors of this family. He stated the case of a bed-ridden woman, not concerning herself in the trade, while in that bad state of health, and was made to answer criminally for the act of her servant. Your lordship sees what is more probable to be the case; it was to go to her account, and there was a bringing to account for the sale of that book. If there was such a thing appeared in the case of Mr. *Almon*—if it was a long course of service, so as to raise that presumption, it would be greatly strengthened; but what shall we say to one or

two shillings, that in this case the bookseller must know of it.—My learned friend says, it was clearly the act of the bookseller; that it was virtually and legally the publication of the defendant; to all civil purposes whatsoever he is called a publisher, to the purpose of answering all civil contracts incident upon such publications. But shall we say, that great book-sellers, who never come near their shop once in a quarter, that this man should be forced to answer criminally for the purpose of a seditious libel, which was published but in two instances only. If it had been a long course of trade, and the frequent interposition or attention of the master to be inferred from a course of trade, then the presumption would go a great way; but as it is now, I submit, it is the lightest presumption in the world; and not that presumption which can convict him; and which presumption must always take place in favour of the defendant, unless it is necessarily excluded by evidence. I shall submit, that taking it in that case, the jury had a right to find that verdict; but would not on any other circumstances be directed by the Court to find that defendant guilty, and would not have been directed by him, unless it was that kind of circumstance equal with positive proof, to exclude all presumption, and rested so: therefore, upon the evidence that was produced to the jury, I shall now conclude, with the observations that I ought to make upon the nature of the evidence. My lord, I admit it to be true, that there was evidence, which, as Mr. Solicitor General has very properly observed, would in a civil suit affect Mr. *Almon*. Though our objection is an answer to him for representing Mr. *Almon's* conduct not answerable civilitor, but criminalitor civilitor, would affect him for the act of another; but criminalitor must arise from his own act, and not the act of another; bearing his command and concurrence, which are the necessary circumstances to affect him with the fact, so as to raise a presumption against him, which is wanting to convict him in this case. And in the case of evidence, I have heard from the bench, Mr.

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Almon ought to be acquitted. I mean to apply myself to the evidence in general, resting that no law exists from which it should ever have been declared, that there was a different measure, or rule of evidence, with respect to this cause, to be made use of. I contend no such distinction can be made but by the legislature.

Then it was objected to us, that we in our arguments contended, though this was a presumption, and that presumption was liable to refutation; most undoubtedly it was a presumption, liable to consideration, and liable to correction; it was not a presumption which was to bind cogently upon the minds of the jury, so as to compel them in their consciences to find this man guilty. They are the only true judges of that, and all kind of evidence; and they ought to judge of the extent of presumption. But, my lord, are there not many presumptions arising out of the same judgment? Is it not a grammatical error to say, that one presumption may arise out of another? Upon the contrary, they lose their force, and produce contrary presumptions. If there is a presumption in this case, it is a presumption, refuting or countervailing the very nature of the cause the jury was trying; it was a criminal case, and, therefore, that presumption lay in favour of the defendant, and ought to controul that presumption raised for the conviction of the defendant.

I shall beg leave to submit that part of our argument, and the answer it has received, resting upon that part in the Court, in the conference between your lordship and the jury. I am persuaded Mr. *Mackworth* misunderstood that part of the direction coming from the bench, and though it has been said, it was imposing a disagreeable task upon Mr. *Mackworth* to make the affidavit he did, I will answer for Mr. *Mackworth*, if he thought it conducive to justice, he was desirous it should be set right; if he thought it a miscomprehension of his, he desires to refute it by a confession; and I submit, Mr. *Mackworth* has done as became

became a man of the best understanding, exercising his judgment in a proper manner; and it became Mr. *Mackworth*, who is a man of great abilities, and most cultivated understanding; but men better instructed in the principles of justice, but not bred to the laws of this kingdom, might misapprehend your lordship's direction. I shall beg leave to observe, what Mr. *Lee*, my learned assistant, has said, there was in the books what might have misled more learned men than Mr. *Mackworth*. Your lordship then explained the point to your own judgment; and those that have understood them often: but what shall we say for a misapprehension of the language of this *prima facie* evidence—Was Mr. *Mackworth* justifiable in supposing there might be some cogent rule of law, establishing this maxim in a criminal prosecution, that the act of the servant should be the act of the master, and the master was criminally answerable for it; and though the jury in their own minds, took it in a negative sense, though they had joined in a concurrence for the verdict, Mr. *Mackworth* might justly entertain such an opinion, that was the doubt he meant to address to the Court; and after saying this, I need not make any other apology than, that he misunderstood the direction of the bench. All directions may be misunderstood by misconstruction of the question they apply to: I am supported in having stated it so; I am sure I should be contradicted in a stranger way than ever I was, if it is not so. If the question proposed to your lordship was, whether what was sworn against Mr. *Almon* did affect him without his concurrence, privity, or consent to it? I should conceive if it was without particular proof of his concurrence or consent, it did not affect him. If Mr. *Mackworth* meant to address himself to your lordship, to know the effect of that evidence, he was then addressing improperly. I submit to the Court, that he, as a jurymen, was the constitutional judge of the weight and strength of the evidence:—When the jury resort to the Court, if they are in doubts on a point of law, in which they should be resolved,

solved what is a doubt of law, they must pray to be resolved in ; but he could be in no doubt about evidence as a point of law ; your lordship had informed him he was the judge of that : He did not, therefore, resort to the Court, to be informed whether they were judges of that evidence ; he wanted to be informed of something which was a question of law, as he understood it. My lord, these strange reports mentioned to your lordship, had raised an opinion in him, that even without privity or concurrence by a rule of law, a juryman was obliged to find the defendant guilty, by the act of his servant ; that he was criminally answerable for the act of his servant. Mr. *Mackworth* meant to be resolved in that : If he had been told or understood it so, that it was a presumption, merely a *prima facie* evidence to him ; and that he was the judge of the weight of that evidence, I am authorized to say, Mr. *Mackworth* would not have concurred in that verdict.

I, therefore, submit it to your lordship, from the words he presses that question with, " Is *Almon* guilty, though there is no proof of his concurrence ? " My lord, the direction, as applying to that answer, I do submit is misunderstood ; because the direction says, it is sufficient evidence against him ; and your lordship did not instruct Mr. *Mackworth* at the time, that it was evidence to be left to the jury, and, therefore, it had the effect to take the determination out of the mouth of Mr. *Mackworth*. He has offered an affidavit to support all this ; and whether your lordship will permit it to be read, I do not know. It has been said, it would be a most dangerous practice, to permit his affidavit to be read ; it would be producing an opinion picked up by conversation with others, since the trial, which would affect him with an intemperance he was not possessed of in the time of the trial. Wherever it is so, it is dangerous ; but this affidavit is founded upon a revision of a clear, unsuspected verdict : but is that the case, that which Mr. *Mackworth* thought was propounded by the verdict, his affidavit refers to, and
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what was his opinion at the time the verdict was given. He only comes now to explain the sense at that time; what the question was he really propounded, he took the answer. Your lordship's saying, that is not to be contradicted by jurymen's affidavits; we have known every day, affidavits of jurymen, who mistook the direction of a judge, and gave a contrary verdict to what the judge would have directed him to have given, if he had known their opinion upon the fact. If the judge mistook their opinion, or they mistook the judge's instructions given upon a different ground, without knowing from the jury what were their real sentiments, I submit, if allowed in any way whatsoever, there is the strongest reason for allowing this affidavit now; and it is not against the opinion he had at the time; it is not setting up an opinion in opposition to the other jurymen, but giving information to the Court.

Lord Mansfield. State what the affidavit says, by way of opening it.

Mr. Serjeant Glynn. The fullest way, my lord, is to read it.

Lord Mansfield. Every man knows the affidavit cannot be read: This affidavit may, with regard to *Mr. Mackworth*, be made to contain a hundred different things he never thought of.

Mr. Serjeant Glynn. From his affidavit, he adds to it, I understood the rule of law to be, that no person can be found guilty of a crime, unless proof is made of the fact. I understood *Lord Mansfield's* doctrine to be, the proof of selling in a bookseller's shop was evidence, by a rule of law, of publication, though that proof did not extend to shew, it was either by his consent, orders or knowledge of the same.

Lord Mansfield. I am excessively glad I asked that; for I find he understood me perfectly well.

Mr. Serjeant Glynn. I am very glad he did so; then every thing is understood. I apprehend the sense of *Mr. Mackworth* to be, that though there was no intention, no privity, no consent, nor concurrence, of the master,

master ; yet the sale in the shop, was by a rule of law the publication of the master.

Mr. Mackworth. My lord, as my name has been so much made use of, I shall claim the favour of the Court to mention what was the only doubt I had in my mind :—I was doubtful, whether the force of the evidence did not go to prove the guilt of the person, by the act of his servant ? or, whether, by the rule of law, that applies guilt to him, in a criminal case, I ought not to consider it so ? I never presumed, what was his servant's, or agent's act, was his act : I applied to the Court upon that. I apprehend I understood your lordship clear, that in the case of a publication, there was a kind of presumption laid down, though the fact did not go home to him personally, unless it was confronted by some evidence, that I ought to find him, in fact, a publisher. That was the whole, I understood, as matter of law ; and upon which, I, as a juryman, gave my verdict.

Lord Mansfield. You understood me perfectly well.

Mr. Serjeant Glynn. If I am not mistaken, he did not understand the direction from the bench, that he was to be the judge of his own conscience ; but that he was to find a verdict upon a rule of law, whether he was convinced or not. I am very well warranted, in saying it.

Mr. Mackworth. I thought it was my duty to presume a man innocent, till he was proved otherwise.

Mr. Serj. Glynn. My lord, I do understand, upon the account he has now given, that he, not instructed as a lawyer, would have acquitted *Mr. Almon* ; and his opinion, from the facts, was for *Mr. Almon* : And I do conceive, from *Mr. Mackworth's* sense of your lordship's direction, that though there was no convincing proof to him, that he was bound by a rule to find him guilty.

Lord Mansfield. I am most exceedingly glad, that in this cause there is no dispute whatsoever, with regard to what was said by me. I was, at the time of trial, anxious that it should be taken down with precision ;
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and if it had not been for the high opinion I had of the council on both sides, I would have taken that caution; for no man remembers exactly all his own words. I cannot say, with certainty, ten minutes after what I say. I applied to the council, to attend particularly to it, that there should be no doubt: They both assured me, there was an impossibility of mistaking; and I am glad it has come out to be no mistake. I took the substance, but not the words; I imagine the words to be as stated by Mr. *Davenport*, that was the answer to the question, that in point of law, the exposing to sale in a bookseller's shop, and selling by a person there, acting as a servant, was evidence of the publication by the master; but that it might be contradicted. It might be contradicted in all the ways in which contradiction is given, to prevent his being considered as a publisher. It is impossible to foresee all these before hand, or to state them. I believe I did state some of them; and observed, that this being *prima facie* evidence, and liable to an answer; if not answered, (as the answer was in the power of the defendant,) like all other *prima facies*, it becomes conclusive. That is the substance of what Mr. *Davenport* has stated; and about an hour after this was over, I say it was after two other short causes were over, I thought to correct my minutes, and take down what I understood to be the case. I will read to you, what I took down myself: I told them that, the proof of a public exposing to sale, and selling at the defendant's shop, by a person acting as his servant, was *prima facie* evidence against the defendant, to prove him guilty of the publication; though that might be contradicted by every sort of evidence, to shew that that sale in the shop was conclusive, or not under his authority, or not in the course of business, but *prima facie* evidence of the exposing to sale in his shop: and I have added what I did not intend to say there, if the sale was once or twice only of the book in the defendant's shop, by persons acting as his servants, it was evidence; and unless it was answered, it was sufficient. Now, that, in point of sense,

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actually falls in with what Mr. *Davenport* states to me. That is the answer I gave upon the doubt made by Mr. *Mackworth*. As to the words he proposed as a question, if my memory had not been refreshed by others, I should have been totally unable to remember them, not taking them down. I understood them as relative to the cause, and as applicable, whether he ought not, upon that evidence, to find a verdict, in point of law, either one way or other; I understood it so; and if any question had been put to me by him, a supposed case that was out of the cause; that supposing, as Mr. *Lee* says, the defendant knowing of it, or if not within his privity, or any other supposed case, I dare say I should have answered him: and I am very satisfied with my answer, and in not saying any thing at all not proper for him to ask, or me to answer; for it would have been an extra judicial opinion, not proper in any cause. I certainly took the evidence to be sufficient, and the eleven jurymen to be satisfied, that the evidence was sufficient. I took Mr. *Mackworth*, that the evidence was not sufficient, though he believed the witnesses: I answered him in the manner I before mentioned. I must take notice now of the new distinction Mr. *Davenport* has made, as to *prima facie* evidence: "*Prima facie* evidence, if left to the jury uncontradicted and if they believe it, yet they may find against it." That is a strange definition of it. That is not *prima facie* evidence: all evidence that can be contradicted, seem as conclusive. The records prove, that it would be hard, if the party were not at liberty to offer evidence against it. All evidence is as liable to be contradicted as *prima facie*; for that means evidence to be answered; there is hardly any evidence but this in the nature of it; it is good till answered. Unless it is answered, it becomes conclusive evidence, in point of law; and it is a mistake, to say, the jury are judges of evidence in point of law: It is not so. The jurymen are judges, whether they believe the witnesses and the evidence; but where, if that evidence is so believed,

lieved, it is, in point of law, sufficient evidence to find a verdict for the plaintiff or defendant. That happens every day, and the plaintiff is nonsuited upon it. It is said, if a jurymen was mistaken in my direction of the evidence, in regard to the law, upon application to the Court, there must be a new trial. Where there is evidence, in point of law, to convict, it is binding upon the consciences of the jurymen to find it accordingly. He cannot say, I find a verdict another way, for that is binding upon his conscience; if he believes the witnesses, it is decisive as to the verdict he is to give; with regard to the point of law, whether this is evidence to convict, in point of law, not being answered by the defendant; why, as it is in his power to answer, he may prove every thing relative to the transaction, without difficulty; I believe I did say, as Mr. *Davenport* said, What I said with a pause, I always understood it to be clear and settled, that that evidence, in point of law, was sufficient, explaining it after; unless it was contradicted. With regard to that point, I shall say very little, having always been of opinion, that I took it in the practice and experience of every body now alive in Westminster-hall, and in the whole history of England; and this is the first time whenever a doubt was made upon that, as a question of law. As often as there have been trials of this sort, it has always been commented upon by the jury. It is in latitude that I take it to address the jury, in doubting of evidence, and in other points; but I cannot find in history, reports, or experience, that, till this occasion, it ever was made a doubt, as a question of law. One circumstance shews very strongly it never was, which, in this cause was for an information, (if for a private) libel (or public) against the bookseller, and they prove it bought in the shop, (what was done in the shop before or after, no notice is taken of that,) then they read the paper.—Now, if that was not evidence against the defendant, they could not read the paper. They could not read that, unless evidence was given of the publication, by the defendant; that was read without objection. It would

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would have been a question of law, whether they could read that, without they could prove the defendant, *Almon*, was the publisher. No such objection was made ; and rightly not made ; the constant practice is otherwise. I had the curiosity to look into several private things, and in all of them, where the nature of the case was so as it was in this ; nay, in a trial afterwards in London, it was, without objection, carried, in proving it bought by one witness ; that is evidence it is bought of the defendant. If they had proved it sold by *Tonson*, or any other, that would venture to sell it, it would have been the same as it is now against the defendant. Another thing, in the case of private libels, in the practice and experience, it is known, there are very often motions made, for liberty to file an information, which is never granted before proof of the guilt of the defendant. What is the proof ? only an affidavit, that it was bought at the shop. This has been the general way I have understood it ; and ever since I have heard any thing of these matters, and I cannot find any case, where, as a question of law, that was argued, or disputed. I should be glad to be set right if that idea of mine is wrong. I shall be ready to retract my opinion, that is founded upon any misrepresentation or wrong grounds. I shall be glad to hear what my brothers say ; I am entirely open. I have long understood it to be a settled law, like the eldest son's title to his father's estates, and as little capable of being disputed ; and upon this cause, that the evidence was legal evidence ; and if not contradicted by other evidence, it was binding upon the consciences of the jury.

Mr. Justice *Aston*. I must confess, I have been in an error, if this principle of law has been received upon a principle contradictory to law and reason ; for it ought not only to be received as evidence of publication, but I think the evidence ought to be held sufficient evidence of this publication ; unless it was refuted by contradictory proof, brought by the master charged with that publication, to shew his innocence
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that respect; and proving, that *prima facie* evidence is not right. It is evidence, if believed, it is not to be rejected, unless there is contradictory proof brought to refute; and, therefore, what *Mackworth* said to my lord, and my lord's answer to the jury, was perfectly right; they could not do otherwise. Now I come to consider, what this evidence is, in the common case of informations, applied for in this Court, ever since I remember the Court, the thing is a constant rule of applying by affidavit, to prove they bought the libel in the defendant's shop; and to the affidavit is annexed, that they bought it of a person in the shop, that they believed to be the servant. Now, in the present case, that appears upon the evidence, which ought to be received, and binding, unless the contrary is produced. It appears, the defendant is a bookseller, and the book, or paper, appears to be printed for him; it is bought in the shop, of a young man in that shop. Now, the objection is, you do not shew by this, that this man in the shop, is the actual servant of Mr. *Almon*, the defendant. But this is the common course: it is bought in the shop, of a person, in the common course of his trade. Why, that is evidence of its being the servant; it is evidence of that fact. Then the objection is, you do not shew, that the master had a particular knowledge of it: It is his shop; his sale; upon his account; he civilly receives the profits;—he criminally must answer for the consequences. It is the case of all shops: They must keep them chafly, and according to law; and they must answer for it. Consider the penalties upon these cases; and how many have been tried, of people selling without the hall mark in plate, and people selling a greater quantity of spirits than the law allows; and upon proof of their being sold in the shop. I have tried several myself upon the plate act, and it has been merely upon evidence, that it was bought in the shop, by the person carrying on such trade. Is there any doubt, that the master was liable to the penalty? The master, in those cases, might come and prove, that it was intended to be sent to the hall.

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Many circumstances might be brought, to shew, that the person was not concerned in it ; as in this case, all the servants of the defendant might be brought. No person could be proved guilty of publishing a libel, if it was not so. That person produced in evidence, might be seen, whether he was the person, or not ; instead of that, brings no evidence, to shew you it was not as described ; a young man in the shop, that commonly did the business there : or that he never gave liberty to any one to sell but himself. His saying I have no servant, I do all my own business, will not do : there must be evidence to shew it. It is proved, they were bought two separate times at his shop : and there is no evidence to leave a doubt, but what it was the common person transacting business in the shop, that sold them. Now, with regard to matter of convenience, it is one of the easiest matters in the world, if a man, behind his master's back, should sell one of these papers, that should charge him with this offence. Pray consider the ill convenience on the other side : If the absence of the master would do, it was easy for them to shew there was the absence of the master : Upon proof, if they might be sold in that way, or, if any man sells in that shop, and not the master : if that was to be his excuse, it would be only for the master to go away for a day or two, or so on, and it would be impossible to convict them. Those cases which are taken notice of in the state trials, is the *King* and *Harris* : And, supposing then, as my brother *Glynn* observes, if the law was wrong, then I wish they were attended to, and revised. In the meaning in which they were attended to in those days, and from the manner in which they are now, there never was any objection made : the person that bought the Orrery, was good proof of that. The two next cases were of the same sort : one was of the person being absent from his shop, and knowing nothing at all of the matter ; that was considered as a circumstance of extenuation, and the person was, as supposed, in very bad circumstances, and very sorry, and surprised by accident : and

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though he was convicted, the punishment was mitigated. I believe, in some cases, such as hawkers of newspapers, who had carried them, and left them at those shops, and they were sold by surprise, then the Court would exercise indulgence.

But what is this case? One circumstance is very particular in it. That it was printed for the defendant himself, which much strengthens this *prima facie* evidence, as it is called, which till it is refuted is most conclusive, and to make it otherwise there must be a contradictory proof produced by the defendant. In my opinion I am clearly satisfied the jury could not do otherwise, they were bound to do it in their consciences, they were bound to give a verdict according to the evidence. I take it for a rule, that the buying a book or libel in a bookseller's shop is sufficient evidence to charge the master with a publication, though it does not appear in evidence that he knew the contents, or of the book being there: If that was ot the case, why, then persons that could not write nor read, would be excused for selling libels, in the extent of the arguments that have been made use of in this affair. The master must, if there was any reason to be assigned, and he must give proof of the same. It seems to me to be clearly laid down, and I am sure the law and practice upon it has been ever since, that where libels have been bought at the shop, and nothing has been proved, in order to satisfy this Court that the information is wrong, the affidavit is brought, that it was sold in his shop. Now, in the third of King *George* the first, in Hiliary term, it was proved, by being in the shop of the person printing it, and unless he gives a good account how he came by it, to excuse himself, he would not be acquitted. To this it was added, *Straban* was a bookseller, and it could not be supposed he would have such papers as this, but in the course of his trade: it was foreign to suppose they were left in his shop; and therefore, he being informed against for publishing those libels, he was found guilty. This was in the direction of the *King* and *Straban*: they were found in

in his shop, it might be suggested that they came there by chance, but the *prima facie* evidence not being answered, he was found guilty. *Prima facie* is to ground the verdict, if no answer nor evidence to the contrary, and therefore in my opinion it seems to me to be as strong a case for making a defendant liable as can be. If there is any thing when this was discovered in this book, though printed for Mr. *Almon*, if it was took from another place unadvisedly, it might be a circumstance of extenuation. But that will not amount to prove nor shew the defendant is not guilty; those kind of circumstances might be urged in extenuation of his punishment when that comes before the court. Therefore I am of the same opinion with my lord, and I have no doubt, nor ever heard of it before, that evidence of buying a book that is libellous in this way, the charge must be upon the master of the shop, it is his offence, he is answerable for what is done in his shop, and so are all booksellers and shopkeepers of any trade; and I am of opinion there is no foundation for a new trial.

Mr. *Justice Willes*. This matter lies in a plain narrow compass. I admit that principle, no man should be criminally answerable for the act of his servant, unless some privity or concurrence of the master appears, for where that appears, the act of the servant to all intents and purposes becomes the act of the master, whether it is in a criminal suit or civil. The question upon this motion for a new trial is whether there was sufficient evidence laid before the jury to prove the master was privy to this transaction; in order to consider it therefore, all the circumstances are to be taken into consideration. Mr. *Almon* has for many years been a feller of books and prints, kept an open shop, and gained his livelihood by it; as a shopkeeper it was incumbent upon him to take care and regulate his shop, that nothing but what was proper should be sold in his shop, and he was answerable for the regulation and conduct of his shop as a bookseller. Then, in an

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open shop, carried on by Mr. *Almon*, in the same day two persons came to purchase this pamphlet in the shop. They say upon oath they did purchase it of a boy in the shop; there is supposed to be a defect in this evidence; they don't say this is the servant of Mr. *Almon*. How is it possible people going into a public shop to tell whether that person that sold it was the servant? It is *prima facie* evidence that he was the servant, if not it was easy for the defendant to have refuted him; he might have called all his servants in his house, they might all have proved they did not sell it, and no other servant that ever attended but themselves; till then the presumption that this man was the servant of Mr. *Almon* was good, it might be the strongest evidence in the world. Another circumstance stronger than the general circumstances is, that this book was not only exposed to sale in the shop of Mr. *Almon*, but in the title page it is said printed for *J. Almon*; now, to be sure, these words printed for *J. Almon*, was not conclusive evidence, but it is a circumstance to shew that was his printing. If that was a charge upon the printer, and was not true upon Mr. *Almon*, it would have been easy for him to shew it was not printed for him, but other booksellers, that is a further circumstance to prove his privity. I will suppose another case, such a man as Mr. *Almon* goes out of town at the time of the sale, and don't return till the Tuesday following, and he finds a hundred is sold before he comes to town; the moment he comes to town sends the remainder back to the printer, I should then be of opinion they were bought without his privity, and the moment he came back he sent them away again, then he would not be liable in that case, if he could prove it was without his knowledge. Then it is said Mr. *Almon* cannot be liable because his servant is liable. Does one man's innocence prove another's guilt? The master must take care his servant don't subject him to punishment by selling of libels; and whether this was done by Mr. *Almon's* privity and consent,

consent, or without it, this information was much more proper against Mr. *Almon* than it would have been against the servant. I think the rule in the *King* and *Straban* was right; the evidence in the *King* and *Nut*, in the case mentioned by *Gibbons* and in *Bernardiston*; I should be sorry to think it would make the party criminal in *Nut*, in *Straban*; it is sensible it ought to prevail in this case, and in every case the master is to be answerable for the act of his servants, where he keeps a public shop, and exposes his books to sale, and they sell libellous books, unless he gives an account how he comes by it. Has he done that in this case? There has not been a single excuse alledged for it, nor any defence set up for it; all they have endeavoured to set for any excuse of Mr. *Almon*, in order to get a new trial is this question, was this or not *prima facie* sufficient evidence to convict? And in regard to the evidence and Mr. *Mackworth's* question, I consider it as a question before the court. If he had put the question to me, Do you think in point of law this evidence, not having been refuted, a sufficient concurrence of the matter? I should have answered it was sufficient. It was originally *prima facie* evidence, liable to refutation; without which refutation it was sufficient evidence to convict upon. I appeal to my lord and my brother, there is no foundation, upon these objections, to grant a new trial.

Mr. *Justice Asburst*. This matter has been so fully gone into, I shall content myself with saying, I think the answer my lord gave to the jury was perfectly right and perfectly legal, and Mr. *Mackworth* perfectly understood him; and I think it is laid down as an opinion always understood in this court, that in order to convict a man of publishing a libel, the proof of its being bought in his shop is sufficient; if it was not so they would be at full liberty to publish all they could get; and if it was not sufficient evidence, it might make it impossible to bring it home to him. I concur with my lord and my brothers that there is not the smallest foundation for a new trial.

Lord Mansfield. You have leave to move in arrest of judgment.

Mr. Serjeant Glynn. We do not trouble the court with any motion.

Lord Mansfield. Let the rule be discharged.

N U M B E R I I I.

(Never before printed.)

TRIAL of an ACTION, brought by the Right Hon. WILLIAM PITT, against JOHN ALMON, before Lord MANSFIELD and a SPECIAL JURY, at Westminster-Hall, on the 20th of Feb. 1786. Taken in Short-Hand by W. BLANCHARD.

Middlesex to wit. } **D**ECLARATION states, That plaintiff is a good, faithful, honest, true and loyal subject of this realm, and as such hath always behaved and conducted himself, and that at the several times of printing and publishing of the several false, feigned, scandalous and malicious libels hereafter mentioned, and long before, was and still is Chancellor of his Majesty's Exchequer and Under Treasurer of said Exchequer, and one of the Commissioners for executing the office of Treasurer thereof, and also a Member of his said Majesty's most Hon. Privy Council, being to those several and respective offices and stations duly and lawfully appointed by his said Majesty, which said offices and stations during all the times aforesaid were and still are offices and stations of great dignity, trust and confidence, touching and concerning his said Majesty's government and the administration thereof, and

and the finances and revenues of this kingdom. And plaintiff at those several days and times was frequently described, and commonly known by the name or appellation of The Minister, or one of his Majesty's Ministers, to wit, at Westminster, in the said county of Middlesex.

That plaintiff hath always behaved and conducted himself as well in his said several stations, trusts and offices, as in all other respects, with integrity, fidelity and honour, and never was guilty of the infamous practice of stock-jobbing, or of gaming in any public or joint stocks, or public securities or funds of this kingdom; and never did gain, acquire, or receive any sum or sums of money, gain or profit whatsoever by stock-jobbing, or by means of any gaming in any of the said stocks, securities, or funds; but hath in all things conducted himself as a true and faithful subject of this realm, without any deceit, fraud, falsehood, corruption, or breach of trust, and hath executed, fulfilled, and discharged the duties and trusts of his said stations, employments, and offices, faithfully, justly, honestly, and honourably, without abuse, fraud, falsehood, or corruption: and always until the printing and publishing of the several false, scandalous, and malicious libels hereafter mentioned, was esteemed and reputed to be a true and faithful subject of this realm, and wholly unsuspected of any of the said offences, or of any corrupt, criminal, or improper conduct; and by reason of the premises, plaintiff had deservedly gained the good-will, esteem, trust, and confidence of his said majesty, and of divers good and worthy subjects of this realm. Nevertheless defendant well knowing the premises, but envying the happy state and condition of the plaintiff, and contriving and maliciously intending to injure and ruin plaintiff in his good name, character, and reputation, and to bring him into utter disgrace, contempt, and infamy with his said Majesty and his subjects; and with intent to cause it to be suspected and believed that plaintiff had acted deceitfully, corruptly, and unfaithfully
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in his said offices and stations, and in breach of his duty and trust reposed in him by virtue of those offices and stations, and had made undue and improper use of the knowledge and intelligence of affairs, which he had acquired by means of his said offices and stations, in order to gain money by the infamous practice of stock-jobbing, and that plaintiff had been guilty of the infamous practice of stock-jobbing, and of corrupt practices and conduct in his said offices and stations, for the infamous purpose of stock-jobbing, and had conducted himself in a manner unsuitable to, and inconsistent with, the honour and dignity of his said stations and offices, for the sake of his own private emolument; and to represent plaintiff as a person unworthy of the trust and confidence of his said Majesty, and his subjects; and also to subject plaintiff to censure and punishment, as for corruption, deceit, and evil practices in the execution of his said offices and stations, on the 20th day of October, in the year of our Lord 1785, at Westminster, in the said county of Middlesex, he the defendant falsely and maliciously printed and published, and caused to be printed and published a certain Newspaper, intituled *The General Advertiser*, printed by *J. Almon*, No. 183, Fleet-Street, No. 2781, Thursday October 20, 1785, a certain false, scandalous, and malicious libel, of and concerning plaintiff in his said offices and stations, according to the tenor and effect following, that is to say, "His Majesty's ministers (meaning plaintiff together with others) have made more by jobbing in the alley (meaning by the said infamous practice of stock-jobbing in the said public or joint stocks, or other public securities or funds, contrary to the statute in that case made and provided) on the Dutch peace, than any cabinet junto we ever had. *Mr. Pitt* (meaning plaintiff) has cleared above an 150,000*l.* (meaning that plaintiff had cleared above an 150,000*l.* by the said infamous practice of stock-jobbing) This is the gentleman (meaning plaintiff) that lamented so much the mischief of lottery-gambling! *Credat Judeas!*"

2d Count.] That defendant of his further malice against plaintiff, and contriving and intending as aforesaid afterwards (to wit) on the 27th day of October, in the said year of our Lord 1785, at Westminster, in the county aforesaid, falsely and maliciously printed and published a certain other false, scandalous, and malicious libel, of and concerning plaintiff in his said stations and offices, according to the tenor and effect following (that is to say) "Mr. Pitt (meaning plaintiff) it is said, in order to make himself popular, means to bring in (meaning to bring into parliament) a bill to prevent the false sale of stocks (in the said public or joint stocks, or other public securities or funds of this kingdom,) commonly called stock-jobbing; but when it is so well known how much the minister and his friends have made by jobbing on the Dutch peace, is it not to be imagined that they will put an end to so lucrative an evil" (meaning thereby that plaintiff and his friends had gained much money by the infamous practice of stock-jobbing in said public securities or funds, contrary to the statute in that case made and provided) and therefore it was not to be imagined that plaintiff and his friends would put an end to the evil of stock-jobbing.

3d Count.] That defendant further contriving, &c. on the said 20th day of October 1785, printed and published another false, scandalous, and malicious libel of and concerning plaintiff (that is to say) "His Majesty's ministers have made more by jobbing," &c. (as in the first count).

4th Count.] That on the 27th day of October 1785, defendant printed and published another false, wicked, scandalous and malicious libel of and concerning plaintiff, viz. "Mr. Pitt, it is said, in order to make himself popular," &c. (as in the second count).

5th Count.] That on the 20th day of October 1785, defendant printed and published another false, scandalous, and malicious libel, of and concerning plaintiff, viz. "His Majesty's ministers have made more by jobbing," (as in the first count).

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6th Count.] Mr. *Pitt*, it is said, in order to make himself popular, &c. (as in the 2d count).

7th Count.] His Majesty's ministers have made more by jobbing, &c. (as in the first count.)

8th Count.] Mr. *Pitt*, it is said, in order to make himself popular, &c. (as in the 2d count).

9th Count.] His Majesty's ministers have made more by jobbing, &c. (as in the first count).

10th Count.] Mr. *Pitt*, it is said, in order to make himself popular, &c. (as in the 2d count).

By reason of the printing of which said several false, scandalous, and malicious libels, and of each of them respectively, plaintiff hath been much injured in his good name, credit, character, and reputation, in his aforefaid offices, trusts, and stations, and otherwise, and hath been brought into great scandal, contempt, and disgrace, and hath lost the esteem, trust, and confidence of divers good and worthy subjects of this realm, to whom the truth of the premises and innocence of the plaintiff in this behalf are unknown; whereupon plaintiff says he is injured, and hath sustained damage to the value of 10,000*l.* and therefore he brings suit, &c.

Plea.—NOT GUILTY. And thereupon issue is joined.

DEFENDANT'S CASE.

THE plaintiff is the minister—The defendant is the printer of the newspaper called *The General Advertiser*; is a person who has a large family, and who, from the early part of life, had always been favoured with the protection and patronage of all the *Pitt* and *Grenville* families, without exception, and this universally known.

This patronage continued to the death of the late earl. The present minister considered him in the same way, and continued the favours of the family down to the time of his being raised to the high offices he now holds. He must, therefore, be fairly considered to be the last man living to have wilfully, or
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even knowingly committed the offence for which this action is brought.

It is then a fair question, Why does Mr. *Pitt* bring this action? To vindicate his public character; which a verdict of a single shilling damage does as amply and fully as 10,000l. the damage laid by this declaration. It is the verdict of honour, not the verdict of profit, that he wants, or that, in this case, can give him any satisfaction. He can take no pleasure in ruining the friend of his father; that would bring a stigma upon his character, which no verdict can wipe away. The verdict of his innocence is the most honourable triumph he can ask, or the jury can give. And surely profit and oppression are not the marks of public virtue, to adorn a public situation.

Now the fact is, that Mr. *Almon* was totally ignorant and innocent of the two publications: he was in the country at the time the libels were printed, he had no knowledge of them at the time, and the first moment he knew that Mr. *Pitt* was offended, he instantly contradicted the paper.—We produce the paper.

Mr. *Pitt* does all this for public justification of his character, which we do not oppose; but under these circumstances claim the favour of the jury, to the conduct of an innocent man whose profession unfortunately renders him liable to errors like every other man in the same line.

If Mr. *Almon* had been disposed to have treated the subject differently, he could have said that such reports had been constantly propagated of every minister from Lord *Sunderland* to the present day. But, not to appeal to the dead, or to books, there are many now alive who remember those reports of Mr. *Pelham*, the whig minister, and his connexions with *Joshua Vaneck* and *Sampson Gideon*, particularly at the time when the interest of the funds were reduced from 4 to 3 per cent. The same was said of the late Lord *Hardwicke*, Lord *Anson*, the late duke of *Bedford*, particularly at the time of the peace in 1763,
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of the late *Charles Townshend*, when Chancellor of the Exchequer; and even Mr. *Legge* did not escape the censure of every other minister: except one, whose glory it was, and who lived to see that glory, the name of this country higher than any other; who dismissed the clerks in his office, because they were known to have dealings in the alley.—Mr. *Almon* knew that minister.

The late Alderman *Beckford* made the same charge against the late Lord *Holland*. No prosecution commenced.—And we trust we may venture to say, that this is the first prosecution of the sort, because such reports have ever been considered by the intelligent part of mankind, as the manœuvres of brokers and stock-jobbers to suit their various speculations, and temporary bargains, and therefore have been treated with contempt by every minister.

The TRIAL.

THE declaration was opened by Mr. *Wood*.

Mr. *Bearcroft*. May it please your lordship, and you gentlemen of the jury, I am of counsel for the plaintiff. Mr. *Pitt* who has felt himself called upon by the most irresistible of all force, the sense of injured honour, to bring the present complaint before you; he and his friends are of opinion, that that honour can in no way be so fully and so completely vindicated as by the present action.

Gentlemen, The complaint he brings in a public court of justice, and before you, and a jury of his equals, in hopes that the verdict you shall give, will mark to the world the high improbability of the charge, and the falsity of it that is the principle of it.—Gentlemen, It would be ridiculous if I, standing for the present plaintiff, should go to work in the ordinary way, by attempting any particular description of him or his character. You are called upon, and I beg leave to call upon you to consider his situation, because it will be an important circumstance in the

the measure of your verdict, which I am confident upon the evidence you will be bound to give.—Gentlemen, It is enough shortly to suggest to you that the plaintiff is in the highest trust and confidence of the King, which ought to be executed for the benefit of the people.

The present charge against him, if you have attended to it in the opening, accuses him of perverting that situation, and abusing that confidence reposed in him by his Majesty for the sake of the public, and making use of that indulgence which his situation in the King's councils cannot but give him, to a purpose directly opposite to which it is charged by this paragraph; that instead of making use of that knowledge for the good of the public, he has a base and sordid mind, and a view to nothing but his personal interest; he applied it to the purpose of pillaging and stripping a great number of individuals.

Gentlemen, Mr. *Pitt* would be utterly unfit for his high station if he could be so silly as to pay any regard to that general obloquy and abuse which it seems to be almost a prescription in this country to pelt the minister with, he can smile as heartily at the general appellations of knave and fool, it is a wind that blows against every minister, and he regards it as little as the wind that does blow; but when a specific and a pointed accusation is made against him, which if it be true, not only renders him unfit for his office, but shews he ought to be put from it with the utmost contempt, and be severely punished by the laws of this country; then indeed he does feel himself called upon to dare the defendant and to dare the world, which the present action gives him an opportunity to do, to prove that there is no foundation for the charge.

Gentlemen, I state to you my client's mind when I tell you that he has long wavered as to what course he should proceed in against the defendant—he might have proceeded we well know by applying to the
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court for leave to file a criminal information, it had its temptations and there were reasons for the temptations—but there were reasons against the temptations; but in that mode of proceeding he would have had an opportunity which he would gladly have embraced of making the fullest affidavit, which was necessary for such a proceeding, that there was not the least foundation in truth for the charge in the paragraph which is the ground of the present prosecution—Upon the other hand, such is the nature of that proceeding that it would have taken from the defendant an opportunity of saying the charges I have made in the paper are true; and I will justify I will prove the truth; the latter consideration determined his choice to bring an action, for in the present action it is put to the defendant or any that wished to assist him if those there be, though upon the present occasion I do not believe there is a man so disposed to make that justification: it is competent for the defendant upon the present occasion to stand forth and review the truth of the charge—he does not dare to do it, he stands simply upon the denial—he has published the present libel—and the plaintiff is called upon to prove it, and if he does; it will be for you to form your judgment what are the damages he ought to receive; but in order to enable you to form a complete judgment of the damages you are to give I will read to you distinctly the words of the libel, and I shall trouble you with a few short observations which you will give such weight to as fairly belong to them.

Gentlemen, The defendant *Almon* is the publisher of a newspaper called the General Advertiser, a paper in great request, and generally published to the number of 2000 every day, that sort of publication therefore, if it contains any calumny against any man's character, spreads it wide, indeed all over this kingdom in forty-eight hours, and in a week over the best part of Europe, for we know that now the papers upon the Continent transcribe every thing almost that

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it is to be found in ours.—Then in this situation the defendant has thought fit to repeat it different times. And now the first charge I have intimated to you is upon the 20th October, 1785; his paper contained these words so plain, that no man can doubt the meaning; therefore it is that nothing like meaning is thought proper to be added to the words themselves upon the face of the present declaration to explain them. The words upon the paper are these:

“His Majesty’s ministers have made more by jobbing in the alley upon the Dutch peace than any cabinet junto ever did. Mr. *Pitt* has cleared above £150,000. This is the gentleman that lamented so much the mischiefs of lottery gambling,—*Credat Judeas.*”

Gentlemen, some low man must have been the author of this; but upon another day, I believe within the week, a charge of the same kind was as plainly stated in another paper.

“Mr. *Pitt*, it is said, in order to make himself popular, means to bring in a bill to prevent the false sale of stocks, commonly called jobbing.”

The defendant’s own language then is a clear interpreter, if a doubt could for a moment hang upon any man’s mind, what it is that is meant by the word stock-jobbing, he himself declares it in his own language to be the false sale of stocks, commonly called jobbing; then it goes on, “but when it is so well known how much the minister and his friends made by jobbing upon the Dutch peace, is it to be imagined they will put an end to so lucrative an evil.” The words are a little misplaced, I believe by accident; there is a little loop hole, in order that they should have nothing to fear about it, and this part is likewise charged to mean to bring an accusation against the plaintiff of stock-jobbing, and making a profit of his knowledge derived from his situation.

Gentlemen, with respect to the fact of publication I shall prove it beyond all doubt; I shall prove that the defendant lives at the place, and the number of the
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house and the street, which is described upon the face of the paper itself; I shall prove the defendant coming backwards and forwards to the Stamp-office, to settle with them his account as publisher and printer for the stamps which are due to government for newspapers published; I shall prove to you a person, upon the part of the Stamp-office, frequently settled his account with him at his own house, that has the direction, which appears upon the face of the paper; and I shall prove to you the two papers containing the two libels which I have now stated to you were published upon the respective mornings of their publication, at the house of the defendant. That proof I should take it for granted will undoubtedly satisfy you, and you must find a verdict for the plaintiff. In doing that you will not complete the measure of justice. Much more is to be done, and it will be for you to exercise a sound discretion what are the fit damages for a sober and serious jury upon such an occasion to give to such a plaintiff against such a defendant, for I am of opinion that the character and description both of plaintiff and defendant is in every cause somewhat material, but in such a case as this is of great importance indeed.

Gentlemen, the defendant is a printer of a common public newspaper: if you loved as I do the liberty of the press, the way to preserve it is to prevent the abuse of it; that is more in your power, sitting in that place, in that character in which you are clothed, than of any men or any set of men besides in the kingdom.

Gentlemen, you have observed, and with great regret, the licentious clamours that in these days are uttered against the gravest, the best, the purest, and the most exalted characters, male and female; it is become a national disgrace: there is not a state upon the face of the globe where that practice is carried on in the way it is in this country. I am of opinion that it well becomes therefore men, who feel themselves possessed of an honest and honourable conscience, whenever a particular crime is imputed to them, to do precisely what the plaintiff has done, by calling upon him
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to make out the truth of the charge if he can. I say, every consideration, public as well as private, calls upon him to do it; justice to the public requires it, for unless it is frequently done the defendant and his partners in this kind of infamous trade (if such there are) will find their account in doing it, and slight verdicts will be laughed at, and held in derision.

Upon a proper cause, Gentlemen, it becomes the jury to give a heavy sum, such as when the accounts come to be settled at the end of the year, it may teach them and caution them to be more careful how they carry on that sort of trade in the subsequent year.

Gentlemen, is it possible against a minister to bring a worse charge than the present? What does it attribute to him? It charges him to be of a mind so fordid, so base, so mean, so avaricious, as never has been attributed to the plaintiff, but by the defendant; that he prostitutes his knowledge which he gains from his situation to pick the pockets of individuals that he professes to enter into a fair contract with for the sake of trade.

Gentlemen, I am of opinion that stock-jobbing by any man is a base proceeding, the legislature has given an opinion upon it, and by the statute of the 9th of the late king, which my lord well remembers by the name of Sir *John Barnard's* act, and it does honour to the name and the memory of that man, it is prohibited, and the name is affixed to the proceedings, which it has borne ever since in every technical proceeding, it is entitled an act to prevent the infamous practice of stock-jobbing.

Gentlemen, the charge upon Mr. *Pitt* is, he affects to play a fair game, though he has seen all the cards. It seems to be not at all short of charging him with diving into the pockets of men and acquiring their property, merely because he has the means of coming at it, which would be infamous in any man, and much more so in a minister. As to what the nature of the charge is, I shall say but a word more, I will hazard the
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observation of any contradiction.—If it be true, he has been guilty of an offence for which it is highly fit he should be prosecuted and punished by impeachment, and all the punishment that the law can inflict in such a prosecution, besides that of public infamy to all posterity. This is the nature of the charge.

Gentlemen, what course my learned friend in his discretion, as counsel for the defendant will take, I cannot possibly foretell; I know him and I know his judgment, and I believe therefore that he will not think it for the benefit of his client, I will venture to say it, even to insinuate there is a possibility of the truth of the charges; if he should I will put in my claim, and I will call upon you before you come to pronounce your verdict, to recollect and consider whether it will not be an addition to the injury if he instructs his counsel, in any degree, to repeat the calumny. I rather think my learned friend will take another course. He may tell you, the defendant, *Almon*, is very sorry that he was out of the way when this happened, at his country-house, at his farm.—This is the way, gentlemen, that they can afford to keep such houses, and put themselves in such situations.

Perhaps it may be said to you, that the defendant, *Almon*, is ready to give up his author; to which my answer is, the receivers are worse than the thieves. If there were no receivers there would be no thieves. If there were not daily prints, in which any man may venture to reek his spleen and malice against an individual, nothing of this sort would appear. I have no difficulty therefore in observing against any arguments that may be urged upon the other side, and to declare in my judgment, that a fit subject of private and public punishment is a newspaper printer, of such daring malicious and licentious calumny as the present.

Gentlemen, I told you I thought the characters of the parties material, I will say but a word to explain it to you, and then I will have done. Small damages to men in ordinary situation are a satisfaction and a perfect clearing of the character, but it is not so with
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respect to men of the description of the plaintiff; small damages will be an additional insult to the injury: and if you were to give them, the defendant would go out of court in triumph, where they ought to be made to pay such as would be a punishment. In hopes he will not offend in future I trust when you come to consider the verdict upon this occasion, you will do not only what the plaintiff aims at, that is to say, justice; but I will take the liberty to say to you, that justice you cannot do unless you give most ample and exemplary damages.

Mr. *Erskine*. I shall put Mr. *Bearcroft* to no proofs of any sort, but to direct that Mr. *Lowten* may read that paragraph which certainly did appear in the defendant's paper.

Mr. *Lowten* accordingly read the paragraph from the paper as follows:

"General Advertiser, printed for J. Almon, No. 183, Fleet-Street, Thursday October the 20th, 1785.—"His Majesty's Ministers have made more by jobbing in the alley upon the Dutch peace, than any cabinet junto we ever had: Mr. *Pitt* has cleared above 150,000*l*. This is the gentleman that lamented so much the mischiefs of lottery gambling.—*Credat Judeas.*"

The other paragraph is—"But when it is so well known how much the Minister and his friends made by jobbing upon the Dutch peace, is it to be imagined they would put an end to so lucrative an evil?"

Mr. *Bearcroft*. I fancy by the course you take now you will not put us to prove the several averments of his being Minister, and so forth.

Mr. *Erskine*. By no means: we all know Mr. *Pitt* is Minister—that he is Chancellor of the Exchequer—and one of his Majesty's privy-council.

Mr. *Erskine* for defendant.

The Hon. *Thomas Erskine*. May it please your lordship, gentlemen of the jury, you have heard from my learned friend a tolerably long, and certainly a very grave, solemn, and I am bound in fair-

ness to say, a very elegant address. My learned friend's talents we are all acquainted with, and it is not at all surprising that upon this occasion he should feel himself inclined to put them all forth, as there is likely to be some change in the state of the law, and this may be considered as a sort of probationary ode of my learned friend's for that legal laureatship which is in the power of my learned friend's client to bestow; and I rather call it probationary, because I think that office considerably leads to panegyric upon the minister. Perhaps it may be thought I in my turn may be candidate for the laureatship of another sort hereafter, as there are two sides, and it may be expected I should recommend myself to certain other persons by a contrary conduct, and I should avail myself of that field which I don't think is wanting altogether upon this occasion, and make some ludicrous observations upon the occasion.

But gentlemen, I stand up as the representative of another, and I hope I shall never betray that trust my client has entrusted to me, and I am persuaded those that will examine into my instructions and my conduct will see how much that will recommend me to their favour. He desires me at once to admit those things which would have taken up a considerable deal of time in proving, and for ought I know might have ultimately miscarried, to say that paragraph certainly appeared in his newspaper; but he is desirous I should make some observations upon it, which I shall now proceed to do.—In the first place, I must consider you as calm, dispassionate men, sitting there to do justice, and not to sacrifice my client to the resentment of any man, however great or however high exalted in his character or situation.

Gentlemen, My learned friend Mr. *Bearcroft* with all his ability and with all his judgment and experience in these questions, seems to me either willingly to desire to mislead your judgments upon the present occasion, or to cause you totally and altogether to mistake the nature of that duty which you are to exercise

ercise to-day : I am persuaded a few observations will make every man in the court think I don't state this matter too strong.

Gentlemen, The liberty of the press is established and protected by the laws of this country, it stands upon the same principles, and I must say, excellent and sound principles, which support and adorn every other part of our legal constitution : for if any paragraph appears in the newspaper, if there is any matter in which the public can suffer, or any danger reach it, or if any calumny is used upon those who are called to the administration of the government, which perhaps though it may not lead to particular damages, brings the government into reproach and contempt ; if such matters arise from the press, whether from all or any of the topics my learned friend has gone so much at large upon, he is out of the usual course of proceeding in this way, for it is the duty of the Attorney General upon such occasions to file an information in this court, without putting his client to make that affidavit which he says his client is so much disposed to make. It is his duty to file it, to bring that man to justice for disturbing the peace of society by bringing charges upon the government, and calumny upon those that are charged with its administration. You know, gentlemen, upon that occasion you would only have to pronounce upon the fact of the publication, you would only have to pronounce upon the thing being itself a libel, and when you have pronounced the word guilty against the defendant, it falls into other hands to allot the punishment. My lord would then have to discharge his duty, by making use of that discretionary power and inflicting that punishment, which, in his judgment and justice, he would think necessary for such disturbing of the peace of society.

But gentlemen, an action is totally a different thing ; I take upon me to say, and I am sure I shall not be contradicted by my lord, that you have nothing at all to do with the peace or order of society to-day,

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you have nothing to do with the example to the public, you have nothing to do with the exalted character or situation of the plaintiff, or with the character or situation of the defendant as a printer of a public newspaper; you are not placed there to reform this country, to make amends in this manner, you are not placed there to have any jurisdiction so as to stop that licentious calumny which becomes a matter of disgrace, you have no matter of jurisdiction, I take upon me to say, and I will bring it home to your consciences to say upon your oaths, what damages the plaintiff has sustained to entitle him to maintain this action?

Gentlemen, By the law of this country you are under my lord's directions to administer to-day, there are but two foundations for a civil action, and two only.—The first is when any offensive matter is false, for there is a great distinction; you observe it does not signify whether the matter is false or true when public order or the public peace is disturbed, but where the matter is false, no matter what it is, that is uttered publicly against any subject in this free country, and he can state and prove that special damage whatever it is, the jury are bound in their consciences to give it.—There is another foundation for a civil action, that is, where words are uttered or publicly spoken against an individual, which, in the general theory of the law is of a sort naturally supposed to bring on the identical damage which the individual complains of, and the jury are charged upon their oaths to say what the probable damages are, what is the probable injury the plaintiff has sustained, and that in conscience as men of truth and honor you think the plaintiff has sustained, that, and no other damage can you possibly give.—For instance, gentlemen, if a man who is in trade is said by another to be or if it be published of him that he is insolvent, for if he is not in trade no action will lie, why does an action lie for saying it of a man in trade?—For this reason, saying so of a tradesman that he is insolvent, is very likely
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to bring all his creditors upon his head, and to produce a bankruptcy, and therefore is not only injurious to his reputation, but is a misfortune to him. If there was a contest concerning a will, and a man publishes it of me that I am a forger of that will, though I can state no specific damage to the jury, I should maintain an action, and recover damages.—Why? Because when mens' bloods are fired by such a contest it is not unlikely it might make me the subject of prosecution. So in the case of a murder, which is unknown, or felony which is unknown, it may fix that supposition upon me, while the matter is in agitation, and wherever a man is liable to a prosecution from supposition, it is actionable, and damages would be given, because it was likely to produce those effects that would cause a damage; but in the common heat of passion, people sometimes indulge themselves in abusing one another, by calling them foolish names, all juries and men of sense make a distinction. I am not permitted to say but I hope I am now informed a little in that particular; but I believe when I came to the bar first, I speak of it with great contrition, no man ever wasted so much time of the learned judge as I upon this occasion; in this way, if a dustman or a chimney sweeper run against them, and afterwards blacked one another, an action might be brought; and if one man should abuse another in a public-house, that damages were to be given for such abuse, and I said I was under the absolute necessity of reminding them that it was that sort of abuse that tended to disturb the peace of human society.

And my lord, with the same patience that distinguishes him always, has been listening now; Gentlemen, you have nothing to do with the public honour or peace of the nation. This is totally different, this is an action in which you are to say upon your oath what damage the plaintiff has sustained: if you think he has sustained any you will give it him. That I think, with submission to my learned friend, Mr. *Bearcroft*, to be the law and constitution of England.

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Our liberty is safe, public order and peace are safe, and in excellent hands with those men who are charged with the administration of public government, if they do their duty to the public: whenever they suffer any calumny in their administration of government, you will not suffer it to pass unrestrained; but when they bring an action they are no longer ministers, they are private men, they come in the character of private individuals, stating and complaining of an injury which they must prove to your satisfaction, and the extent of it, and the damages must be co-extensive.

Now let us try the present action by that.

This is a squib, an idle foolish ridiculous squib, which has been played off; to use my learned friend's own expression, they have pelted every minister so, from the first institution of the funds: The famous Mr. *Pelham*, the duke of *Bedford*, Mr. *Charles Townshend* and my lord *Bute*, they were all pelted so, they were all spoke of except the great father of the present plaintiff, which will be a material observation by and by.

Earl of *Mansfield*. I believe you are mistaken; I believe not one of the ministers you have mentioned was ever charged with stock-jobbing: I am sure Mr. *Pelham* never was, and the duke of *Bedford* never.

Mr. *Erskine*. Perhaps not—your lordship must certainly know, having lived so long in those times.

Earl of *Mansfield*. You know very well they were charged with other things, but not with stock-jobbing.

Mr. *Erskine*. If they were not, they were charged with things which God knows were much worse.

Earl of *Mansfield*. That may be.

Mr. *Erskine*. This paper, I say, don't charge Mr. *Pitt*, and those with whom he has associated, with making the Dutch peace for the dishonour of the country, in order to give them an opportunity of stock-jobbing; but it only states there was an advantageous peace; that stocks were raised; that they had the advantage of it. That is highly ridiculous and impertinent

ment, and that was a thing which till now was never attempted to be prosecuted.

My learned friend says, Mr. *Pitt* would be totally unfit for his situation if he could merit the abuse which by a sort of prescription all the ministers of this country are pelted with; it seems to me if every idle squib or prescriptive sort of newspaper abuse as this is, and if I had a voice loud enough for the whole kingdom to hear me, if I were to ask any man in this kingdom whether the paragraph made any impression upon him, whether he believed it, whether a young man, hardly emancipated from the University where I had the honour of knowing him, should get into this service of the public, and immediately make an advantage of £150,000 by stock-jobbing, I would ask if they could believe it. Mr. *Pitt*'s worst enemy would not say it made an impression upon him. Let us see when this paragraph was made; it is apparently in October last, and referred to something so long past, namely, the Dutch peace that took place in lord *Shelburne*'s administration, and the plaintiff was hardly got into the knowledge of public affairs. Let us see what he has suffered by it:—It was in October last; has he suffered any thing in his character with the public at large? I should be obliged to get further from this place soon if I was to assert it when the contrary is true. For it is the boast and triumph of his friends that he is the most popular man in the country; he has suffered therefore nothing by the people.—Has he suffered in the esteem of his own parlour friends? Did any of them look black upon him, did they mark his ways with suspicion?—No, all those who surround the great plaintiff know that he is esteemed for his great integrity, and therefore they are proud of his acquaintance. If you have gone into the gallery of the House of Commons lately you must laugh at the idea, as he himself does, and as every man must do at such calumny. Has it given any opportunity to invidious men to oppose his measures? or to take advantage of him? I defy any man living to prove it. I consent
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that you should give what damages Mr. *Bearcroft* should ask, if it can be proved any one man, in the heat of abuse which is pelted on the minister by the papers, has taken advantage of what was said of Mr. *Pitt* for it, or said there was the smallest foundation for the assertion in the paragraph. Has it even given an opportunity to his enemy to misconstrue his behaviour? has it hurt his authority in the House of Commons? I don't know whether you have been in the gallery lately, if you have you must know, for we all know very well it would be ridiculous to think of a division; his authority is not lessened there. My friend needed not be afraid of that, let me cheer up his heart, and take away that gravity of his countenance, I warrant him for two-pence he will never be impeached for it; there is no danger of impeachment, there is no danger upon Sir *John Bernard's* old lame act of parliament upon stock-jobbing, it is no hurt to the constitution, that is perfectly safe: but it may happen that the great lords in the upper house, who are in a very high station, may be apt to attend to the dignity of the state. I will venture to say of their lordships, the bishops, they will not frown upon him for it. I take for granted there never was the least danger from the upper house.—But the trust is placed in him by the king, how will he fare there?—This paragraph appeared in October, he is minister to our gracious sovereign at this moment, by his own free choice and approbation; he is not hurt at court, is he hurt in his own mind? or is my friend hurt for him? My friend has almost said he is not, for he laughs as loud, talks as loud as any body, and, if I can judge from his appearance, he eats as hearty and sleeps as sound as ever.—Then what damage is there?—If it is neither with his friends nor with the people at large, nor with the different branches of the legislature, nor with the king, nor in his own conscience and feelings, and if my learned friend is not disturbed by none of those feelings, I should be glad to ask him upon what foundation damages are to be given? Can you say he
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has sustained any? Do you believe the paragraph yourselves? Do you think any other man believes it? Then what is to be the foundation of it, is it to be that you are to take upon you the reformation of the state? You cannot do it, you cannot conscientiously do it, and I take upon me to say there are but two foundations upon which an English jury can, according to the law and constitution of this kingdom, (unless you have a different rule between a minister and another private man) give damages beyond that which you think is reasonable, and probable, no special damage being proved or stated that the plaintiff may have sustained. I will put a case to you to shew you the difference:—Suppose any man said of the great lord chief justice *Hale* or lord *Hardwick*, or the late lord high chancellor, or if it is no offence, I hope it is none, to add, to those two names the name of another, the great judge now upon the bench, suppose any blockhead or ass should write in the public newspaper that those great men had no disposition to administer, or they had no acquaintance with the law, so as to be able to administer it; if the attorney general was to file an information, *ex officio*, to protect the public from such sort of insinuations, would not the court punish them? But if those great persons were to bring actions, I vow to God I would not if I were the jury give damages. I would say public example is not here in question. The peace and order of society is not here in question. What damages could be proved these noble persons had received? The paragraph is *felo de se*, it cuts its own throat, it brings contempt upon the author—it can bring nothing but lustre upon those upon whom it was written, for it leads a man to consider the character of the persons upon whom it was written, and then it would be found they were far above that detraction.

There was another matter thrown out for your consideration. My learned friend says by way of anticipation of what I had to say to you, that my client was out of the way, it was for my friend to prove that he was, and if he meant to aggravate the damages by the malignity of the defendant, which I think as little
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to the purpose as the other in a civil action ; he ought to have proved that Mr. *Almon* was at home, or that there was something to lead him to the knowledge of the paragraph : it was done in the case of Mr. *Bate*, and the verdict proceeded upon it, but I will inform you, the real case was, Mr. *Almon* was in the country when this foolish paragraph founds its way into this paper, he was not in town ; but, says my learned friend, he ought to give up his author: how is it possible he should if he knows him not himself? As to every foolish paragraph which is put into the box of a printer's shop while he is out of town, he cannot give up the author, for he does not know him. With respect to what my learned friend says of the liberty of the press, and this receiver of stolen goods being worse than the thief, is this a proper way of speaking of the office and situation of a printer in this country? Those men who expect any advantage free from all alloys and free from all imperfections, expect that, which in the constitution of human affairs never can exist. God never gave to the world all the blessings and advantages of life without carrying their alloys with them, you cannot have any thing in perfection : the liberty of the press has its evils and alloys, that liberty is apt in general to lead to licentiousness ; I cannot express myself so well as making use of the words of a very eminent person, the late Lord *Chesterfield*, in his speech in the House of Lords upon the licensing act, when he told them the boundaries of liberty and licentiousness were so near one another, so shadowy and doubtful; it was difficult to prove the one without sometimes proving fatal to the other; let us view it with the eye of a political body, it requires a cautious hand to touch it, liberty and licentiousness go so near and are so like one another, it may be compared to changeable coloured silk, the eye can discover two colours, but it is difficult to see where the one ends and the other begins: all the advantages we derive under that excellent constitution and government under which we are so happy, depends upon the liberty of the press, it cannot exist without producing

producing evils, but thank God those evils are not without remedies, and of course whenever the public suffers it revenges its cause, and whenever an individual suffers he has a right to recover to the utmost for that injury to the extent of it, and if my learned friend Mr. *Bearcroft* could shew you any one specific damage done to Mr. *Pitt* in this publication, or that it would raise any thing that even any human being, except he had lost his reason, could state to be the consequence of this libel, I should make no defence, I should say God forbid he should not recover, but I can discover nothing here that calls for it.—With respect to Mr. *Almon*, I am surprised he should be marked out for a victim, for the right hon. plaintiff who has suffered a great deal of abuse of every sort that has been thrown upon the right hon. plaintiff, in which Mr. *Almon* has had no hand, and he is particularly interested in thinking so for he was the friend and favourite of his great father, the Earl of *Chatbam*, and I believe he suffered considerably in supporting his interest, he was often tried for libels wrote in his favour, he has often been at his table, and is not unknown to the right hon. plaintiff. When there was a proposal of accommodation between Lord *Chatbam* and the then ministry, that foolish go-between Dr. *Addington*, or some other persons, thought proper to publish a vindication of Lord *Bute*, which so trenched upon the character of the late Lord *Chatbam*, that Mr. *Pitt*, who was even then at college, published a vindication of his noble father, and put the thing into Mr. *Almon's* hands. He thought himself interested in the quarrels of his family, and he never would have inserted it if he had seen this paragraph; no bribe, if it could be offered to him, would have induced him to it, and though it is so idle and stupid it can do no harm, I am certain no bribe could induce Mr. *Almon* to have done it.

I shall only make one observation more to you, and then I shall have done—My learned friend is pleased to say small damages would be a slur upon the plaintiff, that it would be adding insult to the injury

injury he has sustained—Why good God gentlemen, do you sit there to sacrifice one man to another's resentment, or to do your duty, which I conceive is only to estimate the damages, you are not to consult altogether what another man expects; it is not what he shall expect to receive, but if you should find large damages you are the slanderers and not the defendant that published this paragraph. If you find large damages you will say this, however people may think his character is superior to this detraction, though other people may think so we are of a different opinion, we think he has suffered damage and the people do believe it, therefore he has received an injury and therefore we give damages. Upon the other hand, this is the advice I would give you as an honest man, if you must give a verdict for the plaintiff it should be small damages if you give any at all, if you think there is sufficient to enable you to do it, and the reason why you should give small damages is, it cannot have produced any damage that can deserve the name of damages, because you think the character of the plaintiff so much superior to so much ridiculous nonsense and unfounded insinuation, and you are bound upon your oaths and consciences to give no more damages than he has sustained, and you cannot think it probable that any injury can, or has been felt, or that he has been affected by it, if you feel that, and find accordingly: Mr. *Pitt* will have much greater satisfaction than in a verdict for money to vindicate his honor.—His honor is already vindicated by me, for he has received nothing but panegyric from me, and that is more than upon many occasions he may expect; but it puts him in the most honourable light before you, it puts the plaintiff in the possession of all his profits, and it submits to the justice of the country, and it says if I have offended against the public let me be punished, but don't let any man come to demand damages of me unless he can prove to the satisfaction of the country he has received it, because no man can possibly give them beyond the extent they are proved; I address

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dress you as fair, honest, dispassionate men, and I have no doubt when you consider the whole of this case you will make the damages very inconsiderable indeed.

Earl of *Mansfield*. Gentlemen of the jury, you have had a very ingenious speech, but upon a false foundation, the speech is to prove that a man of the fairest character may be with the greater impunity traduced—from defamation the law implies a damage, and the proof of actual damages is not necessary to sustain an action; it is said if it was a man of so fair a character as not to suffer by calumny, he would bring no action at all, but the law implies the damage, it is the province of the jury in their discretion to assess it, and in doing that they are to take into consideration the character and situation of the plaintiff, the malice and malignity of the libel, the nature of the example, and in short every other consideration to induce them to assess what damages they should imply for that foul offence. My Lord *Sandwich* proved no special damage that he had sustained by the libel he brought an action for; the jury gave him 2000*l.* damages: and the other day when a libel in defamation of Lady *Salisbury* was tried before me, she sustained no particular damage, there was no pretence to prove it, the jury gave her 500*l.* no man alive ever thought the jury did wrong.—In these cases you are to consider the malignity, the false tendency, and all the other circumstances in the case.—And in this case I think the plaintiff deserves the thanks of the public for bringing such a particular attack upon his character under the opinion of a jury.

Gentlemen, you see what sense they would put upon such conduct, the assertion is certainly a very foul one, stock-jobbing is gaming in the stocks, and gaming upon the speculation of the future contingency of the rise or fall of the stocks.—Now I agree with Mr. *Bearcroft*, it is scandalous in a private man who knows the events of politics which another does not, and deals with a man with that superior knowledge and advantage, it is not a fair bargain, for you know what the price is and the other does not know, therefore you
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take an undue advantage of him ; but in a minister it is every way infamous and scandalous, because if you consider for a moment, suppose a negociation for a peace and the minister engages for a peace, there will be a rise in the funds, he is bribed by that consideration to bring that peace about at any rate, it is as much a bribe upon his conduct as if it was given him by a foreign court, so that upon a minister it is a strong charge of defamation ; here it is a specific fact, it is printed in the newspapers, it is circulated all over the kingdom, it is circulated all over foreign countries, and how do they know whether it may not be true ; to be sure many ministers have done it, some have been known to do it, some have been suspected, others have stood clear, but when you carry it to all the different parts of the kingdom, and carry it to the continent, how do they know there may not be such a negociation, when in a newspaper in the capital, such a report and such an idea has got out, that there is a dealing, and therefore the plaintiff has done right in a fact that might be true or might be false, to bring his prosecution in the shape of an action, because you are truly told the defendant may in that shape of prosecution justify, and if he had justified the plaintiff ought not to recover in this action, to be sure example is a consideration likewise mixed in it, and most undoubtedly we all know and feel the terrible mischief that arises from these diurnal publications : in those periodical publications nobody is spared, no minister, no private man, no lady, no foreign minister, no person, foreign or domestic.—The assessing of damages is entirely in your province. I shall not say a word upon it, you will consider them under all the circumstances of the case, the malignity and the intent, and, for the sake of example, you will give those damages you think proper.

The jury went out, and staid near an hour, when they returned with a verdict for the plaintiff, 150l.



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